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International Centre for Human Rights and Democratic Development

TOWARDS A RECONSTRUCTION OF STATE-SOCIETY RELATIONS

DEMOCRACY AND HUMAN RIGHTS IN TANZANIA

Mohamed Halfani, Ph.D

Institute of Development Studies & International Studies
University of Nairobi,
P.O.Box 30197, Nairobi,
Kenya

Maria Nzomo, Ph.D

Institute of Diplomacy, University of Dar es-Salaam,
P.O.Box 35169, Dar es-Salaam,
Tanzania

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February 1995

1001, boul. de Maisonneuve Est, Bureau 1100, Montréal (Québec) Canada H2L 4P9 | Tél./Tel: (514) 283-6073 | Téléc./Fax: (514) 283-3792 | ichrdd@ichrdd.ca | www.ichrdd.ca

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INTERNATIONAL CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT

The International Centre for Human Rights and Democratic Development was created by an Act of the Parliament of Canada and officially inaugurated on 19 October 1990. It aims to defend and promote the rights and freedoms enshrined in the *International Bill of Human Rights* and encourage the development of democratic societies. Although it enjoys a collaborative working relationship with the government of Canada on many issues, the Centre operates as an independent and non-partisan institution. It works closely with citizens' groups, international organizations and governments around the world to strengthen civil societies and to empower people to participate fully in the social, economic and political lives of their countries. Directed by the Honourable Edward Broadbent, the Centre is governed by a 13-member international board of directors, chaired by Professor Gisèle Côté-Harper, Q.C.

Through its Canadian and overseas partners, the Centre provides financial, political and technical support to front-line organizations to help establish democratic institutions and practices. It plays an advocacy/educational role, both in Canada and abroad, speaking out about human rights abuses and advocating policies to reduce their incidence. The Centre has been active in global campaigns to restore democracy to Haiti and Burma, recognize women's international human rights and integrate human rights in international trade agreements.

The Centre concentrates most of its initiatives in 13 core countries – in Africa: Eritrea, Kenya, Rwanda, Tanzania and Togo; in Latin America: El Salvador, Guatemala, Haiti, Mexico and Peru; and in Asia: Burma, Pakistan, and Thailand.

The Centre considers the strengthening of civil society indispensable for the fulfilment of the democratic development aspect of its mandate because, in its view, there is no fully democratic society without the development of a strong civil society permeated by a culture of tolerance. It regards civil society in a given country as the sum of all non-family social institutions and associations which are autonomous, independent of the state and capable of significantly influencing public policy. Strong civil societies have four important characteristics: a) the poor are organized and politically influential; b) there are associations that are politically independent of the state; c) a culture of tolerance exists; and d) substantive equality of access prevails for all groups without discrimination based on gender, race, etc.

In a democratic political system, emphasis is put on representation, formal processes and institutions, such as political parties, elections and legislatures. In a democracy considered as a kind of society, civil and political rights are seen as vehicles to advance equality of condition, not simply of opportunity. In this sense, the building of civil society, expansion of democratic space, popular participation, effective control of the public agenda, just distribution of resources, and civilian control of the military mean progress towards democracy.

In short, a real democratic society is one within which all human rights are implemented and fully respected, not only civil and political but economic, social and cultural rights, as well.

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This novel approach makes human rights and democracy parts of the same agenda. Struggling for human rights implies working for democracy. Building democracy is in turn implementing human rights. And defending democracy implies in fact promoting human rights. So much so that the respect vested, for example, in freedom of speech and freedom of association contributes, in the final analysis, to advancing a culture of tolerance, which is an underestimated and characteristic feature of a democratic society.

Using a framework based on international human rights instruments, the Centre undertakes democratic development studies and workshops to identify, in collaboration with its partners, national priorities for democratic development. The methodology used in the studies is based on the linkage between human rights and democracy and is summarized in the table below. The Centre has grouped internationally recognized human rights into four clusters: security, participation, welfare, and non-discrimination. In addition, this methodology takes into account political institutions. The Convention on the Elimination of all Forms of Discrimination Against Women is included as a key component. Gender equality is a fundamental democratic value. The methodology is both universal and flexible and therefore applicable to assessing democratic development in any country be it Sweden, South Africa or anywhere else.

We hope that the results will be useful to all those hoping to effect democratic change, be they members of Parliament or civil society groups, non-governmental organizations, or international actors. The studies and workshops also guide the Centre's long-term democratic development programmes and are used to provide a focus for democratic development done by other agencies with more substantial financial resources.

DEMOCRATIC SOCIETY INDICATORS

HUMAN RIGHTS	INTERNATIONAL LAW (ARTICLES)			
SECURITY	**UD[1]**	**CPR[2]**	**ESCR[3]**	**CEDAW[4]**
Extra-judicial killing	3	6(1)		
Torture		5	7	
Arbitrary arrest and detention		8-11	9,10, 14	
PARTICIPATION				
Freedom to take part in government (parties, voting, elections)	21	25		7,8
Express opinions (media)	19	19		
Associate in groups (trade unions, political parties, advocacy by NGOs)	20	22	8	
WELFARE				
Education	25, 26		13	10
Health Care	25 (1)		12	12
NON-DISCRIMINATION				
Gender rights	16, 17	3, 23 (3)		3,13
Cultural rights	2,18,27	1,18,27,2	15	
POLITICAL INSTITUTIONS				
Rule of law	6,10,11	9,10,14,16		2,15
Legislature, executive, judiciary				
Military				

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[1] UD refers to the Universal Declaration of Human Rights

[2] CPR refers to the Covenant on Civil and Political Rights

[3] ESCR refers to the Covenant on Economic, Social and Cultural Rights

[4] CEDAW refers to the Convention on the Elimination of All Forms of Discrimination Against Women

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Rights & Democracy
International Centre for Human Rights and Democratic Development
1001 de Maisonneuve East, Suite 1100
Montreal (Quebec) H2L 4P9
Canada

Tel : (514) 283-6073
Fax : (514) 283-3792
E-Mail : ichrdd@ichrdd.ca

This report is a product of a study commissioned by the International Centre for Human Rights and Democratic Development (ICHRDD) based in Montreal, Canada. It was initiated to help develop a deep understanding of the democratic constraints and opportunities in Tanzania so as to formulate a long-range plan-of-action for supporting the building of a democratic civil society.

The study attempts to operationalize a concept of democratic governance linked to the promotion of a comprehensive set of human rights. The underlying premise is that *the ultimate purpose of democratic development is to build a just social order and maximize human potential through the active participation of citizens in controlling their destiny. What "develops" in democratic development is the capacity of ordinary people to improve their material circumstances, strengthen their political voice, hold governments accountable, and develop their talents and interests relatively unrestrained by the state.*

The study has been motivated by the shortfalls in the linkage between human rights activism and struggles for democracy. On the one hand, the analysis of human rights tends to focus on classic civil and political rights, thus ignoring such other rights as gender, cultural and participatory rights. On the other hand, the notion of democracy has usually been restricted to its political facets which emphasize representation, formal democratic processes and institutions such as political parties, elections, and the legislature. Other dimensions of democracy, such as the building of civil society, the expansion of democratic space, popular participation, effective public control of the policy agenda, just distribution of resources and civilian control of the military, are given secondary importance.

In an attempt to understand the process of democratic development through the lens of fundamental rights and freedoms the study focuses on five dimensions of socio-political change in Tanzania: political institutions, participation, security, non-discrimination, and welfare. Integrated progress and change in these areas define the trajectory of democratic development of any society. Each of these categories is closely related to the others; one cannot advance very far from any one of them if others are neglected.

The report is based on an extensive review of primary and secondary documents related to various aspects of democracy and human rights. The documentary reviews were complemented by interviews with a broad cross-section of Tanzanians, and non-Tanzanian partners involved in human rights activism and the democratic struggle.

Tanzania provides an appropriate context for analyzing democratic change through the lens of human rights. In the first place, the country has a better human rights record than many others in the region with respect to extra-judicial killings, torture, arbitrary arrests and detentions. Secondly, Tanzania has managed to contain ethnic and religious rivalries throughout its post-independence history. There is peaceful co-existence and harmonious social interaction among the more than 120 ethnic groups and the various religious denominations. The abolition of chiefdoms immediately after independence and the promotion of a national culture with Kiswahili as a national language have contributed immensely to Tanzania's distinctness among its neighbours.

The third special feature about Tanzania relates to the peaceful manner in which it has passed through major transitions in its political and economic history. In the mid 1980s the country succeeded in peacefully abandoning the collectivist approach it had pursued, with mixed results, for more than two decades. The strategy of *Socialism and Self reliance* was replaced by a liberal, market-oriented development strategy generating a major shift in social and economic orientation.

PREFACE

In 1985, Tanzania succeeded to effect a peaceful succession from one presidency to another at a time when the country was experiencing a severe economic crisis, and the globe itself was enduring major political and economic restructuring. Ten years after the succession, the country has been able not only to maintain peace and stability, but also to embark upon major political reform.

The study which follows is not a treatise on political developments; rather, it is a modest attempt to take stock of the country's progress towards reconstructing state-society relations, and to recommend a number of high-priority activities which might help to accelerate the rate of progress.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. The dominance of the single party state during the first thirty years of independence constricted the space for democratic participation and disrupted the balance between societal and individual fundamental rights. The Bill of Rights became justiciable in courts of law only in 1988.

2. Whereas by 1990, both internal and external conditions were ripe for democratic change, independent mass organizations were developed to the extent that the party-state could assume sole leadership of the democratic transition.

3. A commission appointed by the government to inquire into the implications, modality and content of change recommended that a liberal democratic form of governance (of the Westminster variety) evolve after a constitutional conference, and that a transitional government be established whose main task would be to create the legal and political foundation for a plural democracy. A two-year time-table for change was also proposed.

4. The party-state accepted the main recommendation of permitting multiparty democracy, as well as the requisite legislative measures which have to be taken. It did not accept the proposal to convene a constitutional conference or hand over power to a transitional government.

5. Whereas the composition of parliament has not changed since the democratic transition began, its institutional behaviour has changed significantly, albeit differently as between the execution of policy management and political decision-making. There is heightened dynamism in discharging the supervisory and advisory role on political matters, but parliament remains weak in supervising and enforcing the accountability of the executive concerning development management. It remains reticent to raise issues about the democratic transition.

6. Whereas the executive has been given the critical role of guiding the transition process, it has not assigned a specific coordinating institution to plan, monitor, supervise and evaluate the progress of change. At the same time, while many of the Commission's recommendations have not been "accepted" (including the time-table for change), the executive has not produced a revised program setting out its own vision of change. The executive still demonstrates some of the behavioural practices of the one-party era: it shies away from consultative decision-making, withholds sufficient legal and political space to realize democratic practice, and it has yet to adapt to the basic rules of fair political competition.

7. Despite the institutional damage caused by thirty years of one-party rule, the judiciary, as well as its supporting agency, the Bar, still retains a high degree of vigour, dynamism and autonomy. It can play a leading role in guiding the democratic transition.

8. The current re-dynamization of the judiciary may, in the long run, enhance and consolidate the Rule of Law. However, this prospect is undermined by the executive's reluctance to rectify some of the institutional distortions which contribute to the breakdown of the Rule of Law. At the same time, as a result of the poor performance of the law enforcement mechanism, citizens now tend to take the law into their own hands and mete out "justice" to suspected law-breakers in the form of mob lynching, banishment, confiscation, and other penalties. Besides exacerbating the general breakdown of the rule-of-law, such vicious responses also violate the basic rights of the suspected law-breakers.

9. Compared to many other countries' records, Tanzania's record of respecting fundamental human rights is fairly positive. However, there are systemic factors which impair the state's capacity to improve the situation and, in some cases, to curb human rights violations. The following are some examples:

   The poor training given to police and other security agents leads them to resort to torture as a method of interrogation and investigation. Similarly, low morale and inadequate working facilities within the law enforcement agencies limit their capacity to protect the population.

   At the same time, there is a very low level of legal awareness among the people, not only of litigation procedures, but also of their basic rights and freedoms.

   There are but a few institutions within Tanzanian civil society able to act against human rights violations, promote civic education and assist in litigation. Most of them are in their infancy, and highly dependent on outside assistance.

   The state maintains a highly truncated notion of culture, focusing mainly on its aesthetic and spiritual dimensions. Even these are given secondary importance (or even neglected) in the process of economic policy management. Consequently, those communities which maintain an organic linkage between their cultural life and their mode of material production – such as the pastoralists – have been subjected to persistent violations of their cultural rights when the state and its agencies encounter them in the course of planning and executing "development" projects.

   The problem of pastoralists is exacerbated by the failure of the government to formulate a coherent resource tenure policy, especially following the land conflicts generated by the villagization exercise of the 1970s. Of late, the government has resorted to legislating the problem away, with little success.

10. The gains in sustaining welfare rights established during the 1970s have been eroded by the policy measures undertaken to implement structural adjustment programs. Besides causing a major deterioration in the welfare of the people, the measures have also generated administrative and political tension. At the same time they have contributed to the re-dynamization of civil associations.

11. Outside support for the democratization process has been directed at improving the election system, strengthening some democratic institutions, increasing democratic awareness and skills, and building civil associations. Support has been minimal, however, and largely symbolic.

12. The areas in urgent need of external support are the main organs of government (parliament, executive, and the judiciary) to solve their political and institutional problems and rectify the underlying defects.

13. Other areas include the promotion of civic and legal education within society. Besides increasing the level of awareness among the population, the organizational capacities of the emerging civil associations must also be strengthened.

14. Finally, assistance could also be used to improve communication processes between the state and civil society, that is: improving election systems; strengthening political parties; improving legal systems; and promoting mechanisms of participation, accountability, legality and transparency.

Introduction

Accepting the principal recommendation of the Nyalali Commission of Inquiry, in June 1992, the President of the United Republic of Tanzania gave his assent to several bills which established the framework for a pluralistic political system. Essentially, these bills amended the constitution of the United Republic and removed sections which accorded a monopoly of political power and organization to the one and only party, Chama Cha Mapinduzi (the CCM). The bills also prescribed the modality and institutional agencies required to effect a smooth transition to multiparty democracy. During the subsequent two months, the office of the Registrar of Political Parties was created to oversee the formation and involvement of new parties in the competitive political system. A re-dynamized Electoral Commission, chaired by a high court judge, was appointed. These first steps marked Tanzania's change from a single-party regime, which had reigned for twenty seven years, to a pluralistic political system.

Some two years have passed since the transition to a new mode of governance began in Tanzania. While two years in the life and evolution of a society is a minute time-lapse, for Tanzania, a country whose political growth has been cumulative and evolutionary, the very trajectory of change that has occurred is as important as the quantum achievements it has made over the past two years. Recent experience in the region has demonstrated that it is possible to attain such laudable liberal democratic achievements as competitive elections, universal franchise and separation of powers, and still have a large section of the polity alienated from effective participation and, in some cases, with even dictatorial practices remaining intact. However, there is a minimum number of critical steps which can be taken in initiating a transformation and may define a direction of change which can maximize the potential for citizens to actively control their own destiny.

Since it is the direction of change which determines the viability and sustainability of the movement towards democracy, it is useful, even at this early stage, to examine the path and content of change. Apart from developing a shared perception of the desired direction of the democratization process, the exercize may also reveal some of the factors which either detract from or augment the vitality of the impetus to change. At the same time, in a continent ridden with aborted or unfinished social projects, such an exercise may also provide a vision which could help to pre-empt a negative conclusion.

An additional remark about the content of democratization is germane at this point. As the end of the twentieth century draws nigh, the word "democratization" evokes a mixture of optimism and trauma, as well as apprehension among the African people. Its generic meaning underlines empowerment and accountability. The revival of democracy generates a feeling of hope and salvation for the people of this crisis-ridden continent. On the other hand, it was in the name of enhancing democracy in the 1960s that single-party regimes were established. These same institutions subsequently degenerated into vicious autocracies. Their memory still evokes a sense of trauma.

Since the end of the 1980s the concept of democracy has been back on the development agenda. This time it is espoused by the same western agencies which bolstered autocratic regimes. Unfortunately, it is sometimes used as a ransom condition for material assistance, once again provoking fear and suspicion among the African people.

Given that such confounding sentiments are associated with the notion of democratization, it is useful to isolate the undercurrents subsumed within the democratization process at any point in time. A concrete discussion of the content of democracy should not be perceived, therefore, as being pedantically academic. Indeed, it might illuminate the underlying and prevailing motives and dynamics of the current democratization process.

This study is intended to be a critical overview of the movement towards democratization in Tanzania during the 1990s. By adopting a dynamic notion of democracy, which links democratic development with a broader perception of human rights, the study will investigate and assess the manner in which the foundation for a just social order which maximizes human potential is being constructed. The study focuses on how the institutions and processes of the state, as well as those of civil society are adapting to the reconstitution of the relationship between the two, and how, in the final analysis, they contribute to protecting and consolidating fundamental human rights.

The specific objectives of this study are, first, to contribute to a shared discourse on a conceptualization of democracy which transcends its liberal limits to include such elements as the consideration for welfare and gender and cultural rights, and which accords prominence to the sanctity of human rights. The second objective, a more functional one, is to determine the limits and constraints requiring immediate strategic intervention either from within or, if need be, from friends and partners in the global democratic struggle. At this second level, some of our partners may also benefit by identifying their own areas of expertise which fit with the needs defined indigenously.

The study is divided into five parts. Following this introduction, the part one provides a background to the current changes by highlighting political developments during the first thirty years of independence. The part two will analyse the various attempts to create a liberal democratic system of governance since the 1990s, focusing on the transformation of the state. The part three examines the measures taken to enlarge the participatory space of civil society, paying particular attention to the role of intellectuals and the media. Part four examines the extent to which the system of governance, particularly the changes associated with pluralism, protect and promote fundamental human rights and freedoms. This will be followed by a conclusion and a list of recommendations. —

PART ONE

Politics and Society: Thirty Years of Independance

The Tanzanian political system during the first thirty years has been subjected to so much inquiry and analysis that fresh attempts run the risk of being repetitious and trite. Nevertheless, in order to capture the background to the reforms of the 1990s, it is useful to re-examine political developments during this early period so as to highlight the circumstances which necessitated the change. For the purposes of this report the main focus will be on institutional developments.

Tanzania gained political independence in 1961 bequeathed with all the institutions of a Westminster system of governance. The constitution established the separation of powers, a pluralistic political system prevailed, and there was room for autonomous civil associations. However, while the juridical framework was provided in which liberal democratic procedures might flourish, certain forces actually countered the prevalence of democratic practice within the polity.

The political culture inherited from colonialism fostered strong state centralism granting only a minimum of popular participation. The colonial state legitimized itself fraudulently, it lacked accountability, and made no effort to be transparent. Elections were introduced only thirty-three months before independence–and even these were not on the basis of universal franchise. Civil associations such as cooperatives, community organizations, trade unions, local governments and political parties either consolidated state hegemony or maintained inimical relations with the state. The overall structure of the colonial system fostered an undemocratic political culture. It is this culture and tradition whose legacy prevailed in the immediate post-independence period.

The delayed institutionalization of democratic traditions contributed to the failure to surmount the tensions of state formation in the period immediately following independence. By the time Tanzania gained its independence in 1961, the process of nation-building had not been completed. The nationalist movement acted as a mobilizing force, cutting across ethnic, religious, occupational, class, gender and even racial barriers. However, the different expectations subsumed within the primary demand for political independence resurfaced immediately after winning that basic goal.

Between 1962 and 1964, sectional interests were articulated among trade unions, political parties, religious groups and even occupational agencies including the military. This was happening when the "state" had not yet strengthened its hegemony over society. The ruling elite feared that the divergence in the perception of an appropriate direction for development had an explosive potential to disintegrate such a nation imbued with the legacy of a centralist political ideology. The only viable option for avoiding such a predicament was to repress any divergences by prohibiting opposition and incorporating civil associations under the ambit of the state. To this end, it was necessary to put in place a single-party regime.

The ideological rationalization of the single-party regime capitalized on the deficiencies of liberal democracy in an African context. Indeed, Mwalimu Nyerere expounded a cogently philosophical argument debunking the usefulness of liberal democracy in the specific circumstances of Tanzania in the early 1960s. He argued that continuing with an electoral system in which one political party gained a landslide victory in every election (as did happen with the then-ruling party TANU) was a travesty and a mockery of democracy.

The frequent victory of one party was perceived by Nyerere as a resolute expression by the electorate that they had selected a party of their choice. A repetition of that exercise was wasteful and unnecessary for democratic governance. The strengthening of democracy under those circumstances entailed the creation of a system which expanded the choice of individual representatives within a non-elitist, democratic, one-party system.

It was also argued that, unlike in Western societies during their 200 years of building democratic institutions, the structure of Tanzanian society by 1964 had not yet attained conflicts so irreconcilable that they required the institutionalization of differences. Nyerere found it still viable in the 1960s to proceed within the African tradition of reconciling divergences through harmonious discourse until consensus was attained. The permitting of criticism and self-criticism within a mass party was a modern expression of the traditional consensus while, at the same time, it guarded against national disintegration.

It was the above cultural legacy and ideological conviction that the systematic transformation of the Westminster framework of governance commenced in 1964. In institutional terms the process went through three stages. From 1964 to 1977; the ruling party asserted its supremacy and consolidated its hegemony over civil society. This period began with the end of autonomy for the trade union movement, which was subordinated to the authority of the state (TFL-NUTA). It ended with the merger of the ruling parties of Tanganyika and Zanzibar, and the formation of Chama Cha Mapinduzi (the CCM). In between, the one-party system was legislated, the Arusha Declaration was promulgated, the supremacy and dominance of the party's National Executive Committee of the party in relation to parliament was asserted, local governments and cooperatives were abolished, and all civil associations were brought under the tutelage of the Party.

The second stage, from 1977 to1985, was marked by the fusion of the Party with the State. This was also the period which saw the organizational breakdown of the inherited liberal-democratic operations. The party developed a prominently bureaucratic apparatus which communicated with the state at the personnel level, and completely subordinated the authority of government organs. The supremacy of the Party was boldly enshrined in the constitution whereby parliament was designated as a committee of the Party. The judiciary retained a somewhat tenacious autonomy. During this period, any autonomous growth of civil associations was persistently stifled.

The negative consequences of the first two periods came to the fore during the third phase–1985 to 1990. This period was characterized by a crisis of governance and fuelled by an acute economic depression as well as the negative effects of the bureaucratic ossification of the previous era. The party-state apparatus experienced difficulties in performing the basic functions of maintaining law and order, providing of social services, and promoting the accumulation of national wealth. An alienated civil society tried to resuscitate itself within the narrow confines which remained so as to survive at even a minimum level. At the same time, external capital (initially from the IMF and World Bank, and later from a number of bilateral agencies) exerted strong pressure for change.

The transfer of leadership from Mwalimu Nyerere to Ali Hassan Mwinyi provided an opportunity to reconstitute the state-society relationship. In 1985, almost eighteen years after the Arusha Declaration, the CCM biennial conference held at Kimwaga in Dodoma "recognized" the need for a transition period that would allow the elements of capitalism (including prevailing market forces) to operate. During the same period, the party apparatus was separated from the state bureaucracy. A year later, an agreement with the IMF was signed, launching the Structural Adjustment Program which changed the country's political economy and set capitalist development in motion.

At the end of 1990 the Central Committee of the ruling party dropped ideological training as a requirement for new members. In the February 1991 "Zanzibar Declaration", the National Executive Committee of the Party dropped the Arusha Declaration requirement that members should not have business interests, earn rental incomes, or have more than one salary. In essence, the basic principles of socialism and self-reliance, as articulated in the Arusha Declaration, were revoked in the early 1990s.

The above reforms did provide a favourable political and ideological climate to accommodate the subsequent changes associated with pluralism. Indeed, in 1990, the climate was sufficiently conducive for Mwalimu Nyerere to call a press conference and suggest that it was no longer "blasphemous" to discuss the possibility of introducing multipartyism in Tanzania, a notion he reiterated at the opening of a youth conference a few months later. It was that suggestion which ignited the process and set in motion democratic transition in Tanzania.

Mwalimu Nyerere's initiation of the debate on pluralism could be taken simply as a good reading of the emerging socio-political environment, and a recognition that within the prevailing legal framework he was perhaps the only citizen who could articulate radically different views and suffer no damaging consequences. Towards the end of the 1980s, global and local conditions were pregnant with change. The cataclysmic changes in the Soviet Union and Eastern Europe, a crisis of state governance in a number of African countries, the internal recrudescence of civil society, and pressure from international financial institutions, were some of the factors which called for a major overhaul of centralized systems of the Tanzanian type. No person other than Mwalimu Nyerere could have raised the possibility of change in the light of the emerging situation. At that time, the laws of the land ascribed any advocacy for change as being tantamount to treason.

Initially the impetus arising from Mwalimu's cue came from a small group of urban, self-employed lawyers, retired civil servants and disgruntled ex-politicians, most of whom were based in Dar es-Salaam. Their initial strategy was to mobilize public support for political reform by forming associations and organizing public seminars. While an attempt by a former political detainee to register a Civil and Legal Rights Movement was steadfastly refused by the state, the group succeeded in convening a seminar under the auspices of the Tanganyika Law Society in December 1990.

The seminar was highly critical of the manner in which the government in power dismissed the issue of political reform, and the participants, including prominent lawyers, politicians and academics, argued strongly for multiparty reforms. A few months later, the nucleus of this budding opposition formed a steering committee to organize a conference on the transition to multiparty democracy. Again the state tried to suppress this initiative by banning the committee and prohibiting its seminar. When a registered society–the Tanzania Legal Education Trust–wanted to sponsor the seminar, its registration was revoked.

To a large extent, the mutability of the state facilitated the growth of the weak and nascent proponents of change who had by now institutionalized themselves as an alliance of communists, priests, traditionalists, nationalists, and so on. Within a few months, support for change towards pluralism had spread rapidly to include university academics, whose relationship with the state during the previous two years had not been amicable.

There is no evidence that the initial thrust for change went beyond these elitist circles to encompass the working class or peasants. This was in part because the state retained its monopoly over the media and other instruments, thus circumscribing the ability of the dissidents to link with the masses. The fact that the budding opposition was strategically more inclined to consolidate as a pressure group rather than create a movement for change is probably a contributing factor as well.

At this stage, no single section of Tanzanian civil society was galvanized sufficiently to assume the leadership of the democratic transition. The elite were preoccupied with pressure politics and the masses were preoccupied mainly with basic economic survival. Under these circumstances the state assumed the liberty of leading and directing the transition in its own way.

The transition began as a series of steps to restructure institutions as the state saw fit. Civil society remained an object rather than the subject of change. Indeed, despite two provocative speeches by the influential Mwalimu Nyerere (likely aimed at locating the initiative for change outside the state), by 1990 civil society remained essentially lethargic. Consequently, it was the ruling party which took the first step. It convened a National Executive Committee meeting in Dodoma, to discuss, among other things, Mwalimu's speech. Its conclusion was to sanction a process for reviewing the prevailing political system. The strategy adopted designated the executive organ of the existing state as the leader of the transition. The party also instructed the executive to "inquire" and then propose the modality for the transition. The democratic transition thus became a mere technical exercise!

From this very early stage, there were divergent views as to how the transition would take place. The government opted for a transition led by the existing regime, arguing that such an approach would prevent anarchy and chaos while maintaining stability and cohesion. Only the legal instruments (including the constitution and the existing laws) and existing organs of governance would need to be modified to accommodate the desired changes.

Alternatively, the budding opposition felt that the whole social contract must be renegotiated. In their view, as an apparatus which had emerged from the womb of a single party, the existing regime did not enjoy the legitimacy of the whole polity. It was necessary, then, that the rules and content of the transition be considered by a broader cross-section of society.

The opposition demanded that a constitutional conference be held. The government decided instead to appoint a commission of inquiry.

The predominance of the CCM patrons on the Commission, which was headed by the highly respected Chief Justice Nyalali, raised scepticism about the objectivity of its recommendations. This could have been one of the reasons why Mabere Marando, a prominent leader within the reform movement, declined an invitation to sit as a member on the Commission. However, as demonstrated later in this report, the Commission's report exhibited a high degree of political and professional objectivity.

It is appropriate, at this juncture, to be more specific in tracing the pattern of change from 1990 by focusing on some of the basic elements of the transition. We shall start with an analysis of the institutional framework for the democratic transition. We shall examine how the main organs of governance (legislature, executive, judiciary) adjusted to the requirements of a liberal democratic process of governance, and we shall assess progress towards strengthening the rule of law.

Towards a Liberal Democratic State

2.1 SEARCHING FOR A NEW DIRECTION: LEADING THE TRANSITION AND THE NYALALI REPORT

From the preceding exposition it is evident that until the 1990s the institutional development of Tanzania's political system was characterized by the tendency of the state to dominate civil society and constrict its space for autonomous action. In the process, society's ability to regulate the state was weakened. The notion of the relative autonomy of the state almost attained its full incarnation in Tanzania.

As it was pointed out in the introduction, the transition towards plural democracy in Tanzania is being led by the same regime which has been in power throughout the post-independence period. The leadership role as portrayed by the regime in power is a manifestation of the monopolistic tendencies by which it dominates exclusively all political activities in society. On the other hand, the fact that the government in power can so successfully exclude all political elements outside the ruling party is indicative of weaknesses within the civil society.

In fact, the government is categorical about its rejection of the involvement of non-CCM political organizations through fora such as a constitutional conference or a transitional government. A document produced by Tanzania's ministry responsible for constitutional affairs strongly argued that the existing government has a legal and political responsibility to lead and guide the transition towards plural democracy.

The Ministry maintains that a constitutional conference is necessary only when total civil disorder renders the existing constitution totally unworkable. It is only in such a situation that a new constitution, based on different principles, is legitimate. This situation, the executive argues, does not prevail in Tanzania.

The argument continues that the existing constitution is valid, legitimate, and incorporates all the basic elements of democracy, including: a bill of rights and freedoms, a parliament elected through fair and free competitive elections, independence of the judiciary, the rule of law, and equality before the law. It also prohibits any form of discrimination. In this respect, the country is not facing a constitutional crisis demanding the convening of a constitutional conference.

The government also opposes the idea of involving the opposition in a conference on several other major grounds. First, such involvement contravenes the existing constitution. Secondly, the opposition's idea of establishing a transitional government following the conference bears no historical precedence among democratic countries similar to Tanzania and it violates the existing constitution. Thirdly, there are no established constitutional procedures for convening a "constitutional conference", "constitutional commission" or a "constituent assembly". In fact, experience elsewhere has demonstrated that these meetings take a long time to agree on even organizational basics.

Sometimes the opposition refers to the successful constitutional negotiations which took place in South Africa under CODESA. The Ministry of Justice finds the comparison of South Africa with Tanzania to be ludicrous. The principles underlying the governing of Tanzania are derived from universally recognized principles of democracy which differ totally from the basic tenets of apartheid.

The government's fifth reason for opposing the convening of a constitutional conference is that it would create a legally anomalous situation which would render ambiguous the status of the existing parliament, ambiguous in terms of deciding on whether to retain or dissolve the existing parliament, and which organ has the authority to make this decision. At the same time, the government finds it difficult to accept the rationale behind assigning leaders of political parties (some of which have not held elections), rather than an elected parliament to the authority of formulating a constitution.

The Tanzanian executive believes that when constitutional issues are decided outside of parliament, there is a possibility for parliament to reject some of the resolutions. This, it is believed, could lead to civil conflict similar to that which occurred in Zaire, Somalia or Russia and indeed, once established rules are violated, there is no guarantee that the new rules will be respected[1].

Here it should be noted that the government's association of a constitutional conference with civil strife and the legitimization of crisis has neither a juridical nor a political basis. During the mid 1980s Canada went through broadly based constitutional conferences while maintaining a fairly democratic basic law and a society which was far from being in a state of civil strife. Understandably, the above reasoning is not accepted by the proponents of radical change. In a terse statement reacting to one of the opposition party's withdrawal from any election "supervised" by the CCM, it was observed that the ruling party rejects the idea of a constitutional conference on the basis of an outmoded concept of such conferences derived mainly from the experience of francophone African countries. For the opposition, the South African approach to democratic transition is still relevant and worthy of emulation. They applaud the manner in which the constitutional conference was successfully conducted while permitting the existing regime to remain in power[2].

It was on the basis of the above rationale that the CCM and its government assumed exclusive leadership of the transition process. The party-state was cognisant of the global changes which were taking place at the end of the 1980s, and the requirement to complement the ongoing economic restructuring with parallel political liberalization. In 1990, the Party vice-chairman was quoted to have remarked privately that: ... *Jini limeshatoka nje ya gudulia. Hatuna namna ya kulirudisha tena*

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[1] Jamhuri Ya Muungano Wa Tanzania. **Msimamo wa Serikali Kuhusu Kushirikishwa kwa Vyama vya siasa na utekelezaji wa Mfumo wa Mageuzi**. Dar es-Salaam: Wizara Ya Sheria na Mambo Ya Katiba, 1993, pp.1-7

[2] **Rai** (Newspaper) July 21-27. 1994. p.3

ndani.Hatuna budi kutafuta njia na namna ya kukabiliana nalo..[the jinn has popped out of the pitcher. There is no way we can force it back in. We have to find ways of managing it.][3]

Public opinion was gauged through a general discussion on the implications of changes in the Communist world, and their relevance to major institutional and ideological reform within the Party. On February 27, 1991, the President appointed a commission of inquiry. Of course, pressure from the budding opposition was also instrumental in the government's quick move to appoint the commission.[4]

The commission submitted its preliminary report to the president in January 1992. He, in turn, convened a CCM National Executive Committee (NEC) meeting in the same month to deliberate over the commission's report. In the following month, the Party's National Conference, its highest policy-making body, was convened to decide whether to accept the NEC's proposal that the country adopt a multiparty political system, based on the report of the Presidential Commission.

The National Conference unanimously endorsed the move towards multipartyism and made the necessary amendments to its own constitution. It also appointed a 24-member committee to draft a resolution to the effect that the Union National Assembly and the Zanzibar House of Representatives would make all necessary changes to their respective constitutions.

The Nyalali commission report recommended a liberal democratic system characterized by: (i) the existence of a respected constitution which is the supreme law of the land within which all legal statutes are based and boundaries of powers delineated; (ii) the division of powers between a representative parliament, an independent judiciary and an accountable executive; (iii) the prevalence of the rule of law; (iv) the promulgation of a bill of rights; and (v) an unrestricted multiparty operation.

At the operational level, the Commission recommended that political parties should be completely detached from the state and that the functions of law making, adjudication, and managerial execution should be separated. The governmental framework recommended was a parliamentary system of governance in which the cabinet is appointed from among members of parliament who have been directly elected or nominated by their parties. The Commission also recommended a parliament free from state or party interference except through elected representatives.

As defined by the Commission, the role of the judiciary is: to protect the constitution, ensure that no legislation violates human rights, and promote the rule of law. The independence of the judiciary was emphasized as was the principle that judges and magistrates should be appointed in a non-political manner, and that they should be provided with adequate working facilities.

In principle, the government accepted the basic recommendation of the Nyalali Report concerning the need to introduce multipartyism. Since this study will not address the issue of the union between Tanganyika and Zanzibar (due to its complexity which deserves a separate analysis) it suffices to mention that the Nyalali Commission recommendation regarding a federal system of government was not accepted. Nevertheless, the overall institutional framework for a parliamentary system of governance was accepted. In July 1992, the government embarked on a process to selectively execute some of these measures.

The next section will highlight some of these measures and assess their impact on the advancement of the democratic process.

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[3] Mmuya. M., Op.Cit p.126

[4] Mmuya M., Op.Cit p.131

2.2 CONTINUITY AND CHANGE: THE LEGISLATIVE PROCESS

In April 1992, several amendments were made to the provisions guiding the operations of parliament. These included the provisions on election procedures for parliamentary and local government elections. These procedures, which were amended to permit a plurality of political parties to participate in elections, also changed the composition of parliament and local government councils. Similarly, parliamentary standing orders and rules were amended by removing the clause which designated parliament to be a Standing Committee of the National Congress of the ruling party. A new provision was added permitting each party represented in parliament to form a parliamentary committee of its own members[5].

The category of presidential nominees to the National Assembly, including the 25 regional commissioners who had been ex-officio members, was removed. This meant that parliament was composed of popularly elected members and the nominees from seats specially reserved for women. The latter are to be nominated in the future by political parties on a proportional basis[6].

The 9th Constitutional Amendment of 1992 also added new powers to the National Assembly. In addition to its legislative, supervisory and advisory roles, article 51 empowers the National Assembly to approve the appointment of the prime minister and article 53A provides for the Assembly to pass a vote of no confidence in the prime minister by a simple majority. The same amendment (article 46A) provides for the impeachment of the president by the National Assembly by following a stipulated procedure. Furthermore, in order to protect parliament, Act No. 20 of 1992 circumscribes the power of the president to dissolve the National Assembly by specifying the conditions when that may be necessary.[7] It is plausible to conclude, on the basis of the above changes, that there is adequate scope for the functioning of a dynamic and independent parliament which can fulfil its basic functions. The removal of party tutelage and the enhanced protection of parliamentary security and autonomy have added a new dynamism to parliament. Admittedly, change in the composition of the present parliament, which is still a one-party institution, has not yet taken place. However, the several by-elections which have been held during the last two years, as well as the conduct of parliamentary business during this period, provide some insight into the dynamics of change.

Once the democratic transition got under way the institutional behaviour of parliament began to change, particularly political decision-making. There is heightened dynamism in the discharging of the supervisory and advisory role on political matters. Parliament is still weak, however, in supervising and enforcing accountability with respect to the executive's development management functions.

During the last two years, members of parliament have been less reticent to take the executive branch to task. The new juridical detachment of parliament from party dominance has reduced political control over parliamentarians. Consequently, there is more freedom in the manner in which parliament questions government behaviour. Critical reviews such as the one offered by the member of parliament from Morogoro South can now be tolerated by the powers that be. In this particular incident the member questioned the effectiveness of general governance in view of the fact that between 1990 and June 1994 the " ... government issued a total of 79 directives which have not been executed, 403 commitments/promises which have not been honoured, and 703 scandals which have not been denounced."[8]

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[5] Msekwa, Pius (Hon) "The Response and Responsibility of the Ruling Party (the CCM) and the Government in the Transition to Multipartyism". A Paper Delivered at a Workshop on the Functional Dimension of the Democratization Process in Kenya and Tanzania. Friedrich Ebert Stiftung, Dar es-Salaam, June 20, 1994, p.4.

[6] Ibid., p.9

[7] Fimbo, G.M "Towards Separation of Powers in A New Democracy: Tanzania". Paper presented at the Workshop on the Tanzania Constitution. Organized by the Department of Political Science, University of Dar es-Salaam June 27-28, 1994, pp.8-9

Such change demonstrates not only a hitherto non-existent element of confidence, as well as lack of apprehension on the part of MPs, but also an attempt on their part to engage in systematic research and investigation. Notwithstanding that members of parliament have few facilities and resources for such research exercises, the example cited opens new horizons for parliamentary practice.

Another development relates to the process of law-making. Unlike in the previous period, when bills approved by parliament originated mostly from the executive branch and were drafted by the attorney general, lately, "private member's motions" have also gained prominence. Public issues of national concern such as the acquisition of large tracts of prime land by a foreigner, Zanzibar's membership in the Organization of Islamic Countries, the establishment of the Tanganyika government, and the sale of contaminated food have been brought to the attention of parliament through private member's motions.[9] The decisions in some of their deliberations have countered the preferences of the ruling party and the executive, thus displaying a significant degree of parliamentary independence and responsiveness to public concerns.[10]

Another area where parliament has demonstrated new dynamism is in public policy management. Parliament has the constitutional responsibility to supervise development management through the scrutiny and approval of managerial proposals at various levels. For example, in the planning and budgeting process, the law enables members of parliament to participate from the lowest level through their full membership in the district and regional councils and committees. At the middle level, parliamentary supervision is exercised through the Public Accounts as well as the Economic and Finance Committee of parliament. At the highest level, planning and budgetary proposals are brought before the full parliament for scrutiny and approval.

While the above institutional framework cannot be faulted, the actual practice of managerial supervision by parliament demonstrates mixed results. A significant degree of authority is exhibited by the manner in which parliamentarians have, at times ingenuously used the practice of "withdrawing a shilling" from ministerial budgetary estimates to block a government proposal. This tactic gives to members of parliament the leverage to force the executive to respond to a given demand or query. As a tactic it has been extensively and effectively deployed by the present parliament. Should the executive fail to respond and/or compromize, a parliamentary crisis could ensue, leading to parliament being dissolved and new elections being called. So far, there has been compromise or reconciliation when this possibility has arisen.

Parliament demonstrates an endemic inability in its capacity to check the executive's abrogation of constitutional rules and procedures on policy management. In an analysis of the budgetary process, Rwekaza Mukandala describes various incidents when the constitutional authority of parliament to oversee the raising, expenditure, and accounting of public revenues has been flouted unilaterally by the executive. He observes that:[11]

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[8] **Majira** (Newspaper) No.179, Tuesday, June 28, 1994 p.1

[9] Fimbo, G.M."Towards Separation ... " Op.Cit., p.8 ; Smith, A.G., **Tanzania Report** (manuscript), p.5; **Daily News** (Newspaper) June 8, 1994

[10] Smith, A.G., **Tanzania Report**, Op.Cit pp.11-15.

[11] Mukandala, R.S., "Civil Service Reforms ... " Op.Cit p.8.

> *In January 1994, Government imposed taxes on motor-vehicle owners and others, and started collecting those taxes before Parliamentary authorization. Protests by members of parliament, when parliament met weeks later, were brushed aside. Parliament then rubber-stamped the measures retroactively.*

Mukandala goes on to argue that even when authorization precedes revenue collection-and-expenditure, open disregard or even contempt for the constitution results in non-collection of revenue, and expenditure of money for purposes not endorsed by parliament. Financial observers decry extensive tax avoidance through the granting of exemptions and deferments. Besides benign complaints during question and answer sessions or during the deliberation of ministerial estimates, parliament has not demonstrated any vigour in curbing such executive misbehaviour.

With regard to the technical process of budgetary scrutiny and approval, Mukandala laments that:

> *A majority of members of [the Public Accounts Committee and the Economic and Finance Committee] as well as the larger parliament do not have the expertise seriously and competently to scrutinize budget proposals ... Relatedly, they do not have any expert or technical staff back-up. They depend on their common sense and wits. [Time, is also a constraining factor]. By the time the draft estimates are made available, there is normally very little time before the full house meets. No substantive amendments or changes are expected from the committee, let alone parliament. Tabled estimates are always passed by Parliament.* [12]

Notwithstanding the above weakness in exercising control over the policy management process, and its single party composition, during the last two years parliament has exhibited a high degree of dynamism. In the absence of systematic research, it is difficult to determine whether this is because of a new generation of younger and more educated parliamentarians, or a product of the new political liberalism. In any case, at the political level, parliament demonstrates a new vitality capable of institutional transformation internally.

In fact, the insistence of many parliamentarians to pursue the "Tanganyika motion", even after the party's National Executive Committee had made a final ruling against it, demonstrates the waning of party control over parliament. From the beginning, Mwalimu Nyerere had argued convincingly against the creation of three governments for Tanzania on the grounds that it contravened standing party policy. He argued that parliamentary representatives who have been elected on the basis of a given party policy do not have a political right to change that policy without the mandate of their party and that persisting with such a course could undermine the party.

The current demonstration of parliamentary vigour and dynamism is a promising departure from a situation in which, as late as 1989, a private member's motion which was considered to be an embarrassment to the party and government was simply suppressed. Advocate Ben Lobulu cites the example of a member of parliament who submitted a private motion to discuss the issue of members' rights and independence in parliamentary deliberations. The motion was provoked by the Speaker's move to "withdraw speaking privileges" of several members of parliament when they either demanded an explanation of or intended to block budgetary estimates.

The motion also raised concern over a government threat to dissolve parliament if one of the members opposed the approval of the Ministry of Communications and Works' budgetary estimates by "removing a shilling". However, before the private motion was discussed, parliament convened in camera as a Party Committee and deliberated the issue (enforced Party discipline!) for two days.[13] The discussion never appeared in Hansard.

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[12] Mukandala, G.M., Ibid, p.12.

[13] Lobulu, Ben, "Human Rights in Tanzania: Setbacks and Prospects". A paper delivered at the seminar on Thirty Years of Independence: Achievements, Setbacks and Prospects, Organized by the Law Society Northern Chapter - April 7, 1992, p.20.

It should be noted that the experience of plural democracies elsewhere indicates that veiled departure from the party line (as demonstrated by the persistence of the Tanganyika motion) is only viable during those rare conjunctures when parliament is politically homogenous. At present there is no other strong party waiting in the wings for the government to fall. When a full plurality of political parties is attained, the need to maintain internal coherence and partisan discipline in parliamentary deliberations will reduce the degree of dissension within parties.

One should also note that with the leadership of the transition being carried out by the executive, parliament has been reduced to the level of a reactive agent to initiatives of the executive branch. Parliament simply responds to the initiatives of the government, however calculated they may be. In fact, while parliament has exhibited strong dynamism–through the tactic of withdrawing the shilling and the sponsoring of private members' motions–on specific sectoral issues, it has been conspiratorially weak on fundamental issues of democratic change.

While the Nyalali report was discussed as a coherent document by the Party National Executive, the National Assembly has been receiving its recommendations as a disjointed series of technical parliamentary bills formulated by the executive. As the speaker of the National Assembly concedes: "The most prominent deficiency on the part of the CCM and the government was the failure to publish a white paper on the Nyalali Commission's report, clearly indicating which of the Commission's recommendations had been accepted or rejected, or accepted but modified, etc. As a result, the public was left largely on the dark."[14] Consequently, some of the basic issues concerning principles, including the schedule of change, the constitutional conference, and the enshrining of human rights, are either unattended or diluted to the point of becoming functional technicalities. Parliament has remained conspiratorially silent on this tendency.

Admittedly, parliamentarians did give a good showing during the deliberation of the "Consequential, Transition, and Temporary Provision" bill in May 1992. This provision virtually handed over the management of democratic change to the executive. Indeed, as Max Mmuya observed, this bill gave the executive branch more powers and reduced the legislature to the levels of instrument for legitimating executive actions.[15] However, the main issue of contention was not related to the modality of the transition as recommended by the Nyalali report. In this debate parliamentarians were simply protecting their power which they felt was being usurped by the executive.

During the last two years, parliament has not raised the issue of a constitutional conference,[16] a notion it seems to be incapable of addressing even during these last days of its tenure. Similarly, parliament remains silent on the executive's failure to abide by the time-table for change recommended by the Nyalali report or, alternatively, to present a different time-table. To date, most of the laws which have been identified as violating basic human rights and thus impinging upon democratic participation have not been repealed.

Incidentally, it was only after a newspaper sensationally quoted the registrar of political parties to the effect that the country does not have a constitutional document that a single member raised the issue during a general commentary in parliament. By the time of writing this report, the various changes had yet to be consolidated into a single, coherent, basic law. Tanzania is described as having "no constitution"!

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[14] Msekwa, Pius, "The Response ... ", Op.Cit, p.10.

[15] Mmuya, Max and Amon Chaligha, **Towards Multiparty Politics in Tanzania**, Dar es-Salaam: Dar es-Salaam, University Press, 1992, p.115.

[16] On August 10, 1994, the Minister for Justice and Constitutional Affairs reiterated the government position that the existing constitution is legitimate. All the members of parliament who spoke on the issue agreed with the government position and added that the political institutions which were involved in its creation and consequent amendments drew authority from the will of the people. See **Uhuru** (Newspaper) Jumatano, August10, 1994, p.1, and **Daily News** (Newspaper) Thursday, August 11, 1994, p.1.

While it is convenient to take comfort in the fact that the failure to address fundamental issues of the transition is a temporary inhibition arising from the character of the present parliament (being a CCM derivative), the likely dominance of the same party in the next parliament will perpetuate this trend. At the same time, the critical importance of the constitutional issue demands a more determined endeavour to address it.

Among the critical constitutional issues which needs addressing even before the next election is the protection of minority interests. The Nyalali Commission had the foresight to suggest the following:

> *During the consolidation of majority rule the constitution should be formulated in a manner which also protects the interests of the minority. In this respect the concept of a "loyal opposition" should be enshrined in the constitution.*[17] *(Our Translation)*

Plural democracy is tantamount to being the tyranny of the majority if minority voices and interests are not taken into account in the structures of governance. Indeed, it is essential, if there is to be a truly representative parliament, that the means by which the opposition will be involved in the affairs of parliament be deliberated during the transition period. Otherwise, pluralism will degenerate into a recipe for frustration and despair for those who are not in power.

2.3 THE EXECUTIVE AS AN AGENT OF CHANGE

The Nyalali report is relatively light in its recommendations to democratize the executive. Besides suggesting the establishment of a federal system of the union government, and recommending that the executive organs evolve from parliament, the main accent of the commission was on reducing the powers of the chief executive, severing political interference, fostering the executive's accountability to the national assembly, and strengthening the local government system.

The Commission's perception of a democratic revitalization of the executive merely involved rectifying some of the distortions from the previous era by circumscribing the powers of the executive and reasserting the independence of the judiciary and the sovereignty of parliament. The Commission addressed tangentially the elements of transparency, legality, accessibility, and participation as essential elements of a democratic executive. However, it expected parliament and the judiciary to enforce these basic ingredients of institutional redynamization.[18]

So far, two of Nyalali's recommendations concerning the executive branch have been implemented: the circumscribing of presidential powers as effected in the constitutional changes of 1992, and the curtailing of the direct involvement of the Party in the executive functions. A commission was also appointed to suggest ways to strengthen the local government system. Its report is still being "processed."[19]

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[17] Jamhuri Ya Muungano Wa Tanzania. Tume Ya Rais Ya Mfumo Wa Chama Kimoja Au Vyama Vingi Vya Siasa Tanzania. 1991 (460:viii), p.113.

[18] Jamhuri Ya Muungano Wa Tanzania. Tume Ya Rais ... Op.Cit. see paragraphs: Articles 387-90: 411-5: 460v.vii: 542-64: 585-7:608-9:698: 712(viii).

[19] Jamhuri Ya Muungano Wa Tanzania. Taarifa Ya Kamati Ya Wataalam Kuhusu Serikali Za Mitaa. Dar es-Salaam: Prime Minister's Office. 1993.

The minimal attention given to the issue of redynamizing the institution which has been assigned the important task of managing the transition is striking. The implicit assumption that the existing structures and capacities are sufficiently capable of enabling the executive to perform its dual role of managing the transition as well as transforming itself into a democratic institution is not sound. Equally, the reliance on strengthening the control mechanisms of the legislature and judiciary as a means of containing bureaucratic excess is unworkable. The democratization of the executive goes beyond streamlining its relationship within the governing process; it requires a fundamental, internal institutional transformation.

The judiciary can only protect constitutional and human rights when they are violated and, in most cases, when they are brought to the attention of the judiciary itself. Similarly, the sovereignty of the people as represented by parliament is exercised only in the final stages of the policy process. In much of its dealings with society the executive retains the means to conduct undemocratic practices, especially within the existing organizational structures and bureaucratic procedures.

Democratization requires that transparency, accountability, legality and participation be embodied in the institutional framework and day-to-day operations of the executive. This is even more pertinent in the context of the Tanzanian transition, whereby the executive branch faces the dual challenge of guiding the transition and democratizing itself.

It is useful here to assess the extent to which the existing powers and procedures of the executive facilitate a smooth transition as well as the evolution of an accountable, transparent, accessible and consultative government. In the course of this assessment one should note that the executive branch in Tanzania also has the formidable task of implementing the Structural Adjustment Program which exerts its own pressures on institutional change.

2.3.1 LEADERSHIP AND PARTISANSHIP: PLAYING BY THE RULES

The Nyalali Commission recommended that a special organ be appointed to supervise the implementation of the transition program. In 1992, parliament did not concur with this reccomendation and instead assigned the task to the government as a whole, allowing it to use the existing machinery until 1995.

The Consequential Act empowered the president to direct the transition mechanics, according him the discretion to assign tasks and responsibilities to the appropriate agencies. As part of this process, the office of the Registrar of Political Parties was created, and the autonomy of the electoral commission was enhanced. The president also created a new ministry–Justice and Constitutional Affairs–to coordinate the necessary adjustments to the constitution and effect the necessary legal amendments to facilitate the transition process.

At present, there does not appear to be a special unit at the President's Office, besides the above agencies, serving as the coordinating centre for initiating, monitoring, and evaluating the progress of change. The newly established agencies such as the Justice Ministry and the Registrar of Political Parties perform very specific functions. Technically, for instance, the Ministry of Justice is concerned mainly with law making. The Office of the Registrar of Political Parties facilitates the creation of parties and their participation in the political process. The Electoral Commission simply registers voters, supervises and coordinates elections, and demarcates electoral boundaries. While all these are critical elements of democratic change, they do not exhaust the tasks of the transition.

Furthermore, there is nothing to indicate that the other agencies of the executive bureaucracy have been re-oriented to adapt to the challenges of establishing a socio-political framework for sustainable democratic development. As far as the executive is concerned, the issue of democratic reform is more or less an enclave political undertaking involving only a few institutions. The rest of the bureaucracy continues with routine policy tasks and managerial practices. The democratization process has been reduced to the mere registration of political parties, the organization of competitive elections, amendments to the constitution, and the modification of various legal provisions.

Without an organ performing the synthetic role of guiding the process of democratic change, the transition in Tanzania is sure to remain disjointed. It lacks both a coherent program and a vision. Consequently, the role and character of the executive during the period of change remain undefined.

This creates a serious pitfall for the country's democratization process. As the momentum of change is undermined by an incomprehensible definition of roles along with a high degree of institutional lethargy. No wonder, while raising concern regarding the silence of the union government on the serious constitutional violations pertaining to the union issue, a former prime minister laments as late as 1994 that the "constitution does not have a guardian" (in Kiswahili, *Katiba Haina Mlinzi*).[20]

Since the launch of the transition, and specifically after the enactment of the multiparty legislation in May 1992, little progress has bee made in carrying forward the democratization process other than the registration of political parties and the organizing of by-elections. Each executive organ (including the Ministry of Justice and Constitutional Affairs and the Law Reform Commission) has been concentrating on its regular schedule of public policy activities.

To a large extent, the apparent institutional lethargy is attributable to a failure to specifically define tasks and special responsibilities for executing the transition challenges. In fact, there is an implicit assumption that the groundwork for the transition is already in place. This is tantamount to a static transition.

Besides the apparent lack of drive to perform the initiating role for the democratic transition, the executive has also demonstrated a certain degree of institutional unpreparedness to extend the space for a democratic interaction by removing some of the structural barriers. Several factors attest to this assertion.

First, the initiatives undertaken thus far by the executive organs underscore the need for consultation. The executive has precluded meaningful consultation in such important measures as appointing commissions, formulating rules and procedures, and creating institutions. At this stage where the ground rules are just being set out, the managers of change could have sought support as well as views and ideas from a broader cross-section of the population, including the opposition. This would have created a more participatory transition with a higher certainty of sustainability.

Given its exclusionary approach to change the executive has firmly opposed the idea of either a constitutional conference or broad consultations in effecting constitutional changes. The patchwork of amendments which have been effected during these two years was done under a "certificate of urgency", foreclosing consultation even with some of the internal organs of the legal machinery.

Another area which reveals the attitude of the executive during the transition period is the manner in which the process of legal reform is being handled.

The Nyalali Commission identified forty laws which restrict democratic participation and violate basic freedoms. In a very professional manner, the Commission made a thorough analysis of each of these provisions revealing its particular weaknesses. It even suggested a time-table for making the necessary adjustments, recommending that the process of legal review begin as early as June 1992.

To date, this process has not yet begun. Even the speaker of the national assembly acknowledges this shortcoming, describing it as "negative". In a paper delivered at a workshop on the

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[20] **Rai** (Newspaper) Alhamisi July 21-27, 1994, p.12 & 14

"Functional Dimension of the Democratization Process in Kenya and Tanzania," he observes:

> *There was initially no clear government response regarding the Nyalali Commission's recommendation concerning the abolition of some 40 specified laws considered to be undesirable, allegedly because they impinge on certain basic human rights. It took more than a year and a half for the government to inform the public that the Law Reform Commission had been asked, as part of its routine statutory law reform functions, to examine this particular recommendation of the Nyalali Commission and to advise the government accordingly.*[21]

In June 1993, at a more official level, the Ministry of Justice and Constitutional Affairs issued a statement on the forty laws. Instead of dealing substantively with the Nyalali Commission's observations, the ministry's statement focused on how the "opposition" presented the issue of legal reform. Somewhat defensively, the ministry stated:

> *There are allegations that the forty laws which are said to be oppressive should be repealed before the election because they impinge upon free and fair elections. There are two types of laws which are addressed:*
>
> *2.1 With regard to the election laws, the government has no objection for the opposition parties to identify appropriate areas which need amendment. Up to now the opposition has not done so besides generally referring to the "forty laws." In addition, the government cannot repeal those laws simply on the basis of the allegations (madai)–sic–made in the Nyalali Commission Report, or of the general demands concerning free and fair elections. Those with genuine proposals about the election laws should address them to the Electoral Commission.*
>
> *2.2 And as far as the forty laws are concerned, [so far] no specific argument has been developed showing the deficiencies in each of the cited laws. It is difficult to understand how some of the laws impinge upon free and fair elections.*[22]

The Ministry, while it agrees that most of the cited laws may have some defect, is handling them within the regular legal reform process. It finds no basis for linking the review of these legal provisions and the requirements of the transition to democracy. According to the Ministry laws such as stock theft, capital punishment, witchcraft and collective punishment do not directly impinge upon the democratic process.

By being partisan, the Ministry is missing the essence of the Nyalali Commission's concerns. While the Commission's recommendations are based on constitutional concerns regarding fundamental rights, basic freedoms, and democratic participation, the Ministry's response treats exclusively the single issue of the relationship between the forty laws and competitive elections.

Nevertheless, the Law Reform Commission's initial observations on some of the forty laws are more comprehensive, even though in some cases they are based only on technical aspects of law.

The impression one derives from the Law Reform Commission's reaction is that the main problem is not the infringement of democratic rights or even the violation of the constitution. For the Law Commission, the main problem is simply statutory obsolescence. It finds most of the cited provisions to have been overtaken by political and legal developments. The proposed solution is to harmonize existing statutes, increase safeguards, articulate more clearly, and allow only a few repeals.

The Law Reform Commission concurs with only three of the nine laws which the Nyalali

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[21] Msekwa, Pius,"The Response ... " Op.Cit.p.11

[22] Jamhuri Ya Muungano Wa Tanzania, Maimamo Wa Serikali ... Op.Cit., p.8.

Commission specifically recommends should be repealed. Even in these cases, the reasons for suggesting a repeal of a law include that it has: "outlived its usefulness", "needs to be harmonized with other recent legislation," and that "the Act is superfluous." This is in marked contrast to the Nyalali Report, which states more categorically that some of the laws, such as the Detention Act and the Deportation Ordinance, are unconstitutional.

The manner in which the executive behaves within the emerging context of multiparty politics demonstrates its incapacity to reconcile partisanship and leadership within the democratic process. During the last two years a number of scenarios have emerged which provide a testing ground for the executive to demonstrate its commitment to the ethics of plural democracy. New experiences, such as tolerating political opposition, dealing with independent media, participating in competitive elections, and practicing accountable and transparent modes of governance, compel the executive, which had monopolized power for three decades, to acquire a new mode of political behaviour corresponding to prescribed rules and regulations. There is concern that, in some cases, the executive has not performed well and that, in others, it does not intend to demonstrate the good faith implicit in abiding by the rules.

By July 1994, four parliamentary by-elections had been held in various parts of the United Republic of Tanzania: Kwahani, Ileje, Kigoma, and Igunga districts. They provided a learning experience and an opportunity to assess the efficacy of the established institutional framework for pluralistic elections.

While some of the technical anomalies exhibited in managing of these elections can be attributed to inexperience and the novelty of the whole exercise, the flaws associated with political manoeuvring expose a serious organizational weakness which could jeopardize the whole democratic process.

The steadfast refusal by the executive to heed the opposition's complaints that district authorities either deliberately delay or even refuse to grant permission to organize their meetings, as well as the obvious bias exhibited by the only national radio broadcasting facility for the ruling party, tarnish the image of the executive.

There have also been serious complaints, particularly from the opposition, about unfair election practices. Ultimately, in August 1994 the High Court nullified the election results of the Kigoma constituency which was earlier won by the candidate of the ruling party (the CCM). The High Court upheld five of the eleven complaints submitted in a petition by the candidate of the opposition party (CHADEMA). The petition cited three respondents: the ruling party's candidate (Mr. Azim Premji), the attorney general (on behalf of the government), and Radio Tanzania, the state radio. On the basis of the evidence provided, the judge ruled that the results of the by-election:

> *were affected by a lengthy campaign by Radio Tanzania, Dar es-Salaam, in favour of Premji… speeches castigating the CHADEMA candidate, which were made by the CCM leaders during the campaign had adverse impact on the results … repairs on the main street in Kigoma Town, which were unbudgeted and apparently carried out during the campaigns with the influence of the ruling party, as well as irregularities in the counting of votes are the other actions which worked in favour of Premji. The court upheld that the campaign for the CCM candidate started earlier than the official date … Other irregularities noted by the court were the use of a government plane and vehicles by the CCM Chairman President Mwinyi during the campaign visit to Kigoma, opening additional polling stations in some parts of the constituency, and discovery of voter registration cards which could not be accounted for.*[23]

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[23] **Daily News** (Newspaper), Friday August 12, 1994, p.1

The Attorney General as well as the CCM candidate are considering an appeal against this ruling. At this point it is difficult to assess the above irregularities. Members of the Department of Political Science at the University of Dar es-Salaam have been monitoring the elections. There has been only one published report about the Kwahani by-election.[24] An independent and comprehensive analysis of the whole process has not yet been made public.

Besides the legal and political behaviour of the executive in the democratic transition, as described above, little attention has been given to the techno-managerial dimension of democratic governance. Neither the Nyalali Commission nor the opposition parties have addressed the issue of improving management systems within the executive. The notion of establishing a system of government which is accountable, transparent, accessible, and consultative entails more than strengthening the supervisory role of parliament, as the Nyalali Commission emphasizes. It also involves promoting and establishing such practices as public hearings, managerial information and reporting systems, and participatory decision-making. The changes required to democratize the executive include discarding the tendency to resort to commissions of inquiry as instruments of policy reform. In most cases, these commissions are accountable only to the executive.

2.4 TOWARDS A REVITALIZED JUDICIARY

In addition to revealing a number of statutory limitations to political pluralism, the Nyalali Commission identified four other impediments which hinder the capacity of the judiciary to perform its basic functions of safeguarding the constitution, protecting human rights, and promoting justice. These impediments include: political interference, insecurity of judges and magistrates, the executive's transgression of judicial functions, and inefficiencies within the judicial process.

The supremacy of the Party, embodied in article 10 of the union constitution, vested a monopoly over all public institutions, in the Party giving it the power to safeguard the constitution and the laws of the land. For more than a decade, power accorded to the judiciary under a democratic system was constitutionally assigned to the ruling Party.

The 8th constitutional amendment of 1992 rectified this anomaly by deleting the particular clause which granted a supreme position to the party, and re-instituted the autonomy of the judiciary. During the past two years, there has been no reports of direct political interference by the ruling party at any level of judicial authority. In fact, judges and magistrates, without hesitation, have made a number of judicial rulings which are unpopular with the ruling party.

The independence of the judiciary was also undermined when there was interference with the security of tenure of senior judicial functionaries. The constitution protects judicial independence by assigning the task of appointing judges to the president in consultation with the Judicial Service Commission. Security of tenure is guaranteed by a clause with stipulates that judges can be removed only through following specific procedures.

Past experience has shown that the executive has a way of tampering with judges' security of tenure without violating the constitution. It appoints them to other positions in the parastatals and the civil service[25]. Professor G.M.Fimbo points out that " ... in 1971 one of the senior judges of the High Court was appointed chairman of the Permanent Commission of Enquiry (PCE). He did not resume the functions of judge until 1973. Secondly, in two instances, 1975 and 1985 a judge was appointed Minister in the Government of the United Republic. Thirdly, in 1976, another judge was appointed Chief Corporation Counsel of the Tanzania Legal Corporation. Three years later he was elevated to the Court of Appeal. Fourthly, in 1978, yet another judge was appointed Counsellor in one of the Tanzanian missions abroad."[26]

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[24] Mmuya, Max........

[25] Legal Aid Committee, Faculty of Law, **Essays on Law And Society**, Dar es-Salaam: Faculty of Law, University of Dar es-Salaam, 1985, pp.9-10.

Existing evidence indicates that this practice had stopped in mainland Tanzania as of the mid-1980s. However, some quarters still suggest that security of tenure must be entrenched in the constitution by adding a clause stipulating that judges cannot be transferred or seconded out of the judiciary against their will.[27]

Some legal experts argue that the independence of the judiciary is also intruded upon by the usurping of absolute adjudicatory powers by the executive. The tendency of some administrative tribunals to vest final powers of arbitration to a minister infringe upon the authority of the judiciary. For example, the Security of Employment Act 1964 gives the Minister of Labour the power to determine appeals against the decisions of conciliation boards relating to the summary dismissal or a proposed summary dismissal of an employee. It states that the decision of the Minister "shall be final and conclusive and may be enforced in any court of competent jurisdiction as if it were a decree."

The Nyalali Commission's recommendation, which has been heeded only in part, is that all adjudicatory functions should be the province of the judiciary and, where such functions are performed by administrative tribunals, such tribunals should be supervised by the High Court.[28] Amendments to the election law have incorporated this recommendation.

Summarizing the weaknesses of the administrative tribunals, a correspondent in a daily paper wrote the following:

> *[Tribunals] are created to satisfy the crave by the executive to exercise judicial powers. The rationale is that tribunals must take as paramount the interests of the state. [Its members] are therefore appointed directly by the state and do not enjoy the Constitutional guarantees, security of tenure, protection of salaries and emoluments as do the judges of the High Court and Court of Appeal.*
>
> *Their independence is therefore limited. Their composition is usually such that laymen are in the majority. It satisfies nobody's curiosity if a sprinkling of judges of the High Court is made to make them look like courts.*[29]

Even without political interference and tenure insecurity, the Tanzanian judicial system is ridden with institutional limitations which impair the execution of justice. Summarizing some of the constraints to the administration of civil justice, the Chairman of the Law Reform Commission, Honourable Justice Mwaikasu, provides a comprehensive review of the problems facing the administration of civil justice in Tanzania. He lists some of the factors which contribute to delays in the disposal of civil cases to include: inefficiencies in process serving, non-appearance, and numerous chamber applications for interlocutory orders. Furthermore the poor management of cases seems to be an endemic problem hindering the dispensation of justice. These problems are caused by poor record-keeping leading to misplaced files, long cause-lists of cases fixed for trial, incompetent court clerical staff, and low worker morale and lack of commitment among clerical staff.

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[26] Fimbo, G.M., **Constitution Making and Courts in Tanzania**, Dar es-Salaam: Faculty of Law, University of Dar es-Salaam, 1992, p.75.

[27] Legal Aid Committee, **Essays on Law and Society** ... Op. Cit., p.10.

[28] Fimbo, G.M., **Constitution Making** ... Op. Cit., p.140.

[29] Cited in Legal Aid Committee, **Essays On Law And Society** ... Op. Cit., p.55.

The justice also mentions the problem of poor working conditions for judges and magistrates as being a serious constraint to efficient operations. Housing conditions for judicial functionaries is not only inadequate, but it also lacks the facilities necessary to reflect and write on serious matters of justice. Similarly, it is common for judges to share offices and other facilities. Finally, the judge concedes that corruption is among the factors which contribute to the undermining of justice.[30]

There are indications that some of the above problems are being addressed. In June 1993, a new Legal Sector Review Task Force was appointed by the Minister of Justice and Constitutional Affairs to study the laws and legal system in the light of the multiparty and market economy developments in Tanzania.[31] The World Bank is sponsoring a multi-million dollar project to improve the financial and managerial systems of the legal sector (Financial and Legal Management Upgrading Project, FILM UP). One element of this project involves consolidating the scattered legal statutes. There are also internal moves to streamline the cause lists so as to improve hearings and trials.

During the 1990s, the judicial system is increasingly demonstrating a high degree of re-dynamization, supportive of the democratic process. The possibility in 1994 that the High Court could entertain an application for an injunction–to restrain President Mwinyi from his post pending a civil suit filed by a school teacher–would probably not have been possible in the one-party era. In this suit, the teacher alleges that the President violated the constitution by allowing Zanzibar to join the Organization of Islamic Conference (OIL).[32]

The school teacher invoked his constitutional right (section 26(2)) which entitles every person to follow legal procedures to institute proceedings for the protection of the constitution and legality. Nevertheless, the presiding judge, who also happened to be the Principal Judge, used a legal technicality to reject the application. He agreed with the senior state attorney who stood on behalf of the president that:

> *... the High Court lacks the jurisdiction to grant the relief sought by the applicant ... In any case, any rule of common law granting this court such a jurisdiction would, by necessary implication, have [been] abolished in this country by the provisions of section 42 and 46 of the Constitution [which provide a different procedure for impeaching the president].*[33]

The principal Judge concluded that:

> *I have given careful and earnest consideration to the competing arguments addressed to me on the issue of jurisdiction and in the end I am satisfied that the [defendant's] argument is sound in law ... The principle that the function of one branch of government should not encroach on the functions of another branch is a very important principle.*[34]

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[30] Mr Justice Mwaikasu, "Problems Facing the Administration of Civil Justice in Tanzania". A paper presented at the Judges' Seminar, Arusha April 19 - 23 1993.

[31] Smith, p.46

[32] **Daily News** (Newspaper), Monday, June 13, 1994, p.3.

[33] Ibid.

[34] Ibid.

2.4.1 THE CRITICAL ROLE OF THE BAR

Judicial activities in any democratic society cannot function without the effective participation of members of the bar, lawyers and advocates. A Chief Justice of the High Court of Bombay is quoted as saying that:

> *Administration of justice is primarily concerned with discovering the true version between the two versions placed before the court by the contending parties in a civil litigation or by the state and the accused in a criminal trial. Experience has convincingly shown that a judge in his isolated glory is unable to do it … In order that justice should be properly administered we need not only a competent judge but also an efficient lawyer. It is for this reason that the profession of lawyer has always been looked upon as one of the most responsible professions.*[35]

Over the last few years in Tanzania an active cadre of private advocates has evolved, most of whom are based in the large urban centres. In addition, there are other institutions including some civilian, which assist the judiciary in administering justice and raising legal awareness. These include: the Legal Aid Committee of the University, the Tanganyika Law Society, Swat's Legal Aid Unit for Women, and the Tanzania Women Lawyers Association. The relationship between these agencies and the judiciary, as well as the Attorney General's Office, is generally cordial and professional.

There are some areas where the relationship is less than congenial. For instance, the amendment to the Advocates Ordinance (Cap 341), effected in 1990, opened up a potential area of conflict among the above-named institutions representing the legal system. The amendment gave the Chief Justice or the High Court powers to admonish, suspend, or make an order to remove from the roll any advocate if they find any reasonable cause to do so. Besides being placed under the mercy of the Chief Justice, the lawyer can now also be disciplined by judges of the High Court.

An even more disturbing anomaly was demonstrated recently in a constitution petition case lodged by Reverend Christopher Mtikila. In his petition the reverend demands a referendum on the union, the repealing of some unconstitutional articles in the Societies Ordinance and the Police Force Ordinance which already violate human rights principles and the freedom of association. Other demands include that a constitutional conference be convened, that the Newspaper Act be ammended and that individuals be allowed to stand for elections without necessarily representing a political party.[36]

On the 24th of June a senior state attorney filed a plea requesting that the presiding judge refrain from sitting and adjudicating on the petition on the grounds that Justice J.L. Mwalusanya "is a human rights activist and an author of a document advocating democratic principles and the promotion of human rights in a multiparty system. The plea contends that the Justice has already indicated total deference to all issues articulated in the petition, and that he counsels the intending petitioners on how to couch their argument once the matter is brought to court. The plea asserts that taking into account Mr. Justice Mwalusanya's pre-judgement stand on the issues, and his counselling the intending petitioners I, and indeed any fair-minded observer entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the issues on account of pre-judgement"[37].

A few days later, the only other judge (Justice J.H. Msoffe) at the Dodoma High Court where the case was being heard announced that he was not ready to sit on the case. There is speculation that "Justice Msoffe's stand on issues of human rights and democracy was not very different from that of Justice Mwalusanya."[38]

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[35] Fimbo, G.M., **Constitution Making** … Op. Cit., p.142.

[36] **Family Mirror** (Newspaper), 1st issue, July 1994, p.5.

[37] Ibid.

[38] **Family Mirror**, Second Issue, July 1994, p.1.

The articulate letter of complaint by Reverend Mtikila to the Attorney General underlines the gravity of state intervention. The reverend charged that:

> *... the grounds for seeking the disqualification of Justice Mwalusanya from sitting on this case were themselves harmful to the administration of justice ... the primary objective of the constitution is to establish and maintain human rights and democracy ... Therefore, any Judicial Officer who participates and or manifests talents in human rights and democracy to the extent of writing about or lecturing on them is therefore more competent and qualified to handle constitutional cases, and not vice versa ... it was absolutely improper to reject Judge Mwalusanya for the reasons that the said judge "advocates human rights and upholds democratic principles. Such qualifications ... hardly make a judge to be partial. The rejection of the learned judge implies that the attorney wants a peculiar judge who does not uphold democratic principles and embrace the sanctity of human rights, which would be certainly against your instructions or advice to him ... [The rejection of any judge by the state based on these grounds] is a dangerous precedent due to the infinity of the outcome of the action if it is left unreserved, because it disqualifies all other judges too, since their common objective is the administration of justice based on the very principles of democracy and human rights ... [The action of the state attorney compels me to also suspect any judge the State would be satisfied with, and therefore warrants his rejection as well] ... And that would be the infinity the State had intended.*[39]

This petition, which is described as unprecedented, marks a serious dent in the relationship between the judiciary and the executive.

2.4.2 JUDICIAL ACTIVISM

In the course of interpreting and applying the law, the Tanzanian judiciary (like all other judiciaries) has found itself making and changing laws. Indeed, under the principle of division of powers the authority of law-making is bestowed upon parliament. In practice the other branches of government do participate in making and developing legislation.

The technical opportunity availed to the judiciary to interpret laws in a manner which partly or completely alter its basic orientation creates room for judicial functionaries to contribute positively or negatively to the democratic process. In a more direct way, the Nyalali Commission recommended that the High Court should be the guardian of the constitution and that it should ensure that no law passed by either parliament or the executive branch violates the basic principles of the constitution, especially aspects of human rights.

It is in this light that the notion of judicial activism is now in vogue. Justice Mwaikasu observes that for the courts to perform their societal responsibility it is important that, first, judges and magistrates be creative, courageous or fearless, and impeccably impartial. They should not interpret statutes simply by looking at the letter and content of provisions–rather they should try to discover the purpose and intention of the law. They should not be bound by precedent but depart from it when necessary; and that law must be interpreted to give protection to human rights.[40]

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[39] **Family Mirror** (Newspaper), Second issue, July, p.3.

[40] Mr. Justice R.J.A.Mwaikasu," Role of the Judiciary as Guardian of Human Rights", a paper presented at a seminar on Human Rights and Law Enforcement, organized by Welfare Through Law Trustees, October 7 to 8, 1993, Dar es-Salaam, pp.8-9.

Chris Peter[41] compiled the following landmark decisions made by the judiciary which declared certain legal provisions to be unconstitutional:

1. Chumchua s/o Marwa vs. Officer in charge of Musoma Prison and Attorney-General, High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No.2 of 1988.
   The relevant statute was the Deportation Ordinance, 1921 (Chapter 38 of the Laws of Tanzania).
2. Daudi s/o Pete vs. The United Republic, High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No.80 of 1989.
   The relevant provision was Section 148 (5e) of the Criminal Procedure Act, 1985 (Act No.9 of 1985) which raises the issue of whether bail is a right or a privilege.
3. Bernado Ephrahim vs. Holaria Pastory and Gervzi Kaizilege, High Court of Tanzania at Mwanza, (PC) Civil Appeal No.70 of 1989.
   The relevant provision was Paragraph 20 of the Local Customary Law (Declaration) No.4 Order, 1963 (Government Notice No.436 of 1963) which prohibits women from inheriting land.
4. Misperesi K. Maingu vs. Hamisi Mtongorei and Nine Others, High Court of Tanzania at Mwanza, Civil Case No.15 of 198.
   This case led to declaring the activities of *sungusungu* (traditional security groups) to be unconstitutional.
5. Kukutia Ole Pumbun and Leshau Ole Lemurt vs. The Attorney-General and the United Republic of Tanzania, Court of Appeal of Tanzania at Arusha, Civil Appeal No.32 of 1992.
   The relevant provision was Section 6 of Government Proceedings Act, 1967 (Act No.16 of 1967) as amended by Act No.40 of 1974 which provides for the requirement of getting the permission of the government before suing it.
6. Obadiah Saleh vs. Dodoma Wine Company Ltd., High Court of Tanzania at Dodoma, Civil Case No.53 of 1990.
   The relevant provision was Section 40A of the Security of Employment Act, 1964, which provides that the employer can refuse to reinstate a worker even after being directed to do so by the Minister responsible for labour after a conciliated labour dispute.
7. Christopher Mtikila and Three Others vs. The Republic, High Court of Tanzania at Dodoma, Criminal Appeal No.90 of 1992.
   The relevant section was Section 41 of the Police Force Ordinance which purports to empower Police to prevent even private meetings or assemblies.

Judges of the High Court have been more active and dynamic in judicial activism than their superiors in the Court of Appeal. Chris Peter goes as far as describing the Court of Appeal to be conservative and protective. It is perhaps rulings such as the following which prompt him to describe the Court of Appeal in such terms.[42]

> *We need hardly say that our Constitution is a serious and solemn document. We think that invoking it and knocking down laws or portions of them should be reserved for appropriate and really serious occasions... If we may be permitted to borrow and extend the term "Ambulance Lawyers" in currency in certain jurisdictions, it is not desirable to reach a situation where we have "ambulance courts" which go around looking for situations where we*

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[41] Private Correspondence. See also Peter, C.M.,"Five Years of the Bill of Rights in Tanzania: Drawing A Balance Sheet", in **Revue africaine de droit international et comparé**. Vol.4 Pt.1, pp.131-167.

[42] Ibid., pp.146 -147.

> *can invalidate statutes ... [The judge] on his own, decided without complaint and before the benefit of learned arguments to construe Section 4 of Act No.21/69 ... [He] initiated his own cause and then sat on it as a judge ... The approach was manifestly unjudicial and emphatically undesirable.*[43]

2.5 THE RULE OF LAW

The notion of rule of law as defined by Tanzanian jurists refers to a doctrine which demands that all actions of the state affecting the rights and life of the individual in civil society should conform strictly to procedures and limitations prescribed by law. It has three underlying principles. First, is the absolute supremacy of regular law as opposed to arbitrary powers and discretion. Second, is equality before the law, and third is the existence of an independent judiciary capable of safeguarding individual liberties against their encroachment by the state. The autonomy of the judiciary is guaranteed through the independence of the judges, respect for human rights in the constitution, and the prevalence of relative non-partisanship on the part of the judiciary in the adjudication of disputes where individual rights are in conflict with state interests.[44]

Prior to 1992, when politics prevailed over legal and managerial rationality, Tanzania had a poor performance record on maintaining the rule of law. Arbitrary political decisions frequently interfered with and even violated the basic foundation of law. With the gradual opening of society, however, amd particularly with the advent of private media and the effective autonomy of the judiciary, there are signs of slow progress towards positive development.

While the executive strives to uphold the supremacy of regular law in managing the public policy process, in promoting and protecting private economic investments, settling land disputes, easing religious tensions and maintaining public order, there are still deficiencies in the system's performance in this realm. Besides the unsatisfactory record in human rights protection (an issue which will be addressed in the next section of this paper) the executive has had a lackadaisical attitude during the two years of democratic transition towards the rectification of past distortions which contribute to the violation of the rule of law.

One of the distortions which the government seems reluctant to rectify is the behaviour of the traditional law enforcers, - the *sungusungu*, who are neither legalized nor regulated by any appropriate legislation. Its members have often acted outside the boundaries of the rule of law, and subjected innocent citizens to harassment and injury. While there is some acceptance that the institution plays a useful role in society, its ambiguous legal status and its unregulated behaviour has contributed to gross violations of the rule of law.

Other examples which demonstrate government negligence in abiding to the principles of the rule of law include the recent introduction of a motor vehicle surtax, without parliamentary approval. The constitution, the basic law of the land, dictates that all methods of revenue collection and expenditure must be authorized by parliament. Any action contrary to this stipulation is a gross violation of bureaucratic jurisdiction. The remedial measure taken by parliament to grant retrospective approval provides neither a deterrence nor an ethical justification.

There is some evidence that certain sectors of civil society are becoming increasingly aware of their essential rights pertaining to the rule of law, even in the area of policy management. The recent announcement that the union representing government and health workers is taking to court the labour minister, for violating a law guiding the negotiation of wages, should be welcomed as a positive illustration of legal assertiveness.

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[43] Fimbo, G.M., **Constitution Making** ... Op. Cit., p.138.

[44] Legal Aid Committee, **Essays on Law and Society** ... Op. Cit., pp.29-31.

Of graver concern, however, are the inadequacies of the law enforcement system as a whole. Earlier in this report we referred to the institutional constraints of the judiciary in executing its functions. Similar limitations impair the performance of the police force and the prisons service.

Labour and equipment constraints limit the capacity of the police force to deter, arrest and prosecute law breakers. The archaic conditions of the prisons serve more to harden than to reform its victims. The prevalence of such severe weaknesses in the structures of law enforcement not only reduces their ability to perform, but it also generates a vicious circle of lawlessness.

Weak law-enforcement agencies lead the people to lose faith in the notion of the rule of law. As a result, people either create their own illegal and unregulated parallel structures or they take the law into their own hands. Both options incite deterioration of the rule of law.

The common thread running through the above problems is society's level of legal awareness. Justice Kisanga observes with reference to enforcing and safeguarding human rights, that the underlying foundation for the rule of law is the

> *... people's awareness of their rights. This is because, firstly, the process for remedy must be initiated by the victim and, secondly, a person cannot seek a remedy for a violation of a right unless he is aware of the particular right and its breach.*[45]

Justice Kisanga raises the important issue of legal education. The average Tanzanian suffers from a total ignorance of basic legal rights. Society has surrendered the whole sphere of law, which has become a monopoly of the state. Attempts by various civil associations to provide legal training and distribute educational pamphlets are handicapped by the magnitude of the problem as well as by a lack of resources. However, lately the issue of legal education, as defoned by rights, duties and organizational goals, seems to occupy the agenda of almost every social movement. In the long-term this positive development will improve the rule of law.

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[45] Mr.Justice Kisanga, R.H.,"Erosion of Public Confidence in the Law Enforcement System", in **The Lawyer**, Tanzania, January-March, 1994, p.36.

PART THREE

Forging the State-Society Linkage: Popular Participation and the Democratic Process

The transformation of the organs of state governance, in itself, does not guarantee democratic participation if the institutional and procedural linkages between state and society are not effective, or if they only promote specific interests. Within the liberal political tradition various mechanisms for mediating between the state and civil society, specifically: a plurality of political parties, competitive elections, an independent media, and the legal space for the formation of civil and occupational associations to propagate specific interests. In fact, the reference to the "democratic transition" entails creating a framework for the establishment and growth of these institutions and processes, in addition to the transformation of the state. Below, we shall examine how these linkage mechanisms are being forged and developed in Tanzania.

3.1 MAKING ROOM FOR MULTIPARTYISM

The official legislation of the Tanzanian parliament–The Political Parties Act, 1992–ushered in the new era of multiparty politics in that country. The Political Parties Act sets guidelines and limits to the democratic transition process. It legislates about the registration, operation, and deregistration of political parties.[46]

The Political Parties Act, 1992 gives the ruling party the right to free registration through a law of parliament. Equally, the various amendments made by the government in the Constitution and other laws are couched in a way that will ensure that the ruling party is a few steps ahead of the other parties.[47]

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[46] Tambila, Kapwepwe. I. "The Transition to Multiparty Democracy in Tanzania: From One State Party to Many State Parties" A paper read at the First Regional Conference on Law, Politics, and Multiparty Democracy in East Africa. Dar es-Salaam, October 17-23. 1993, University of Dar es-Salaam. p.8.

[47] Peter, C.M. "Determining the Pace of the Change: The Movement to Multiparty and Law in Tanzania". A paper read at the First Regional conference on Law, Politics, and Multiparty Democracy in East Africa. Dar es-Salaam, October 17- 23. 1993, University of Dar es-Salaam.

The Act stipulates that the office of the Registrar of Political Parties is to be set up in the Attorney General's Office, appointed by the President, and answerable to the Minister of Justice. The Minister appoints registrars and other officers. Political party registration is not subject, therefore, to the Societies Ordinance. Fully registered parties are entitled to hold and address public meetings anywhere in the republic with the permission of the local District Commissioners (DC). They are also entitled to protection by the security forces, and can contest and campaign for any elective post in the union from president to village chairman.

However, the law gives the Registrar of Political Parties uncontestable powers to deregister a party, for "contravention of any of the provisions of the Act" or for ceasing "to qualify for registration under the Act." Furthermore, the registrar is empowered to inspect the accounts of political parties and publish any matters relating to their funds and properties in the official gazette when he publishes the annual audit report of every party.

Ideally, the office of the Registrar of Political Parties should be autonomous and not subject to another office, especially a political one. Making the Registrar subject to the Minister of Justice, who usually belongs to the party in power, gives the ruling party undue advantage.

Peter has observed in this connection:

> *Though not openly, one cannot fail to notice the manipulation by the government of the office of the Registrar of Political Parties to the extent that the Registrar has been very selective in dealing with political parties. In this double-standard way of handling matters relating to political parties, he has been very strict on some and extremely soft on others. While going to the extent of deregistering some parties, he has chosen to close his eyes to others even where it has been beyond all reasonable doubt that they have been registered through fraud and deceit.*[48]

Democratization, considered in terms of political participation and competition, requires more than one effective political party in the country. Multiple political parties facilitate political competition; they mobilize contending issues and populations, thereby creating a potential ruling consensus that can be the basis of a stable majority rule up to the next election. In this context, political parties play the role of mediating organizations between the citizenry and the state, in determining who should be entrusted with the state power apparatus. Therefore effective political parties are a necessary condition for genuine democratic competition. Such parties need to establish permanent socio-political and organizational power bases. The CCM has had over thirty years to institutionalize and establish its capacity, but the new parties have only had some two years.

From the outset, the playing field for multiparty politics was uneven and unfairly tilted in favour of the incumbent CCM. The CCM entered the multiparty era with an outright advantage in terms of its organizational set up, its actual presence in literally every village in the country, its finances, which had been coming from state coffers, and extensive properties built in part from party members' contributions, but most often from funds obtained from the tax contributions of all citizens. The CCM controlled the administration and the police, and continues to do so. It controls the public media. The CCM-appointed District Commissioners are still the licensing authorities for the public political meetings organized by all political parties.

There was no attempt by the CCM to distance itself from the government after the introduction of multipartyism. Hence the CCM continues to enjoy all the facilities and machineries of power and control still monopolized by the government. While most opposition parties have repeatedly complained of discriminate denials for permits to hold rallies, and of being denied access to the state-controlled media, the CCM conducts its political rallies freely, and has unlimited access to the main radio station, Radio Tanzania. Radio Tanzania is the most effective method of communicating with the largely rural Tanzanians, who do not have access to newspapers or other forms of print and electronic media. This has created political tension between the CCM and other political and civil groups seeking autonomy and their right to organize freely.

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[48] Ibid.

3.2 Limits to Political Participation

The rather sudden transformation of political groups into opposition political parties was largely in response to the requirement that all political activities be conducted exclusively through registered political parties, with no political space reserved for independent candidates.

The law banning independent candidates seems to have been intended to prevent members of the new political groups that did not obtain registration as political parties from standing as independents and winning elections. The ban forces people to become members of political parties if they want to exercise their right to participate in public affairs. By establishing political parties as the only site for political participation, this policy effectively restricts individual and collective freedoms of association and the right to choose one's arena of political participation.

Furthermore, party registration criteria require that all political parties must have a national character, that is, they must be pan-territorial, with membership from both parts of the union. This requirement is meant to discourage registration by new parties which are ideologically opposed to the union.

There are still many laws on the statute books which need to be amended or repealed to allow fair political competition in the conduct of elections. The Nyalali Commission identified forty repressive laws and recommended their amendment or repeal. These recommendations have not been acted upon to date. The most controversial of these laws is the Presidential Detention Act, 1962, a law which empowers the incumbent President to detain people without trial for an indefinite period. Peter argues that the current government has retained this law as a weapon to be used against the opposition. "It is true that from the political opposition's point of view the law (the Preventive Detention Act) hangs as a Sword of Damocles over the heads of the anti-CCM political leaders. The lurking omnipresence of this law is a present and imminent danger to the opposition parties and haunts them daily" (Peter C.M 1993:46). In this connection, Peter argues that, if the government is really serious about multiparty democracy, then it should not go into it half way. It should open Tanzania fully to the acquisition of democratic culture and the rule of law. This entails, *inter alia*, repeal of not only the Preventive Detention Act, but also the Deportation Ordinance, Cap 38; Area Commissioners Act, 1962 Cap 466 and Regions and Regional Commissioners Act, 1962 Cap 461, all of which allow the Chief Executive and his representatives at both the regional and district levels to detain people without recourse to the law. In Peter's judgment, this is the feeling of the majority of the people.[49]

Due to the restrictions on political participation, and the socioeconomic legacy of the single party era, new parties are being founded without support from any specific social stratum, provided they meet the set conditions for registration. These new parties thus enter the political arena lacking a distinct character with which to attract potential supporters and voters. The general tendency is to engage in populist and sensational issues that they imagine appeal to mass sentiment. They also tend to spend more time criticizing the current regime than designing an alternative democratic and development agenda. Some even target opposition personalities as their principle focus of political debate and action. So far opposition parties offer little tangible or viable alternative to the incumbent regime.

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[49] Ibid. p. 48.

Neither is there evidence that if any opposition party were to come to power it would rule differently. The opposition parties have yet to establish a dialogue with the people to discern what the majority of citizens really wants.

The opposition political parties lack a clearly defined, issue-oriented national agenda that cuts across and draws together the various sectors of civil society and its representative organizations. The current opposition-sponsored democratization debate in Tanzania has not addressed substantive issues other than the constitution. Indeed, to the majority of citizens, the issues which the opposition parties stand for vis-à-vis the CCM are unclear; thus they are at a loss to comprehend what alternative future they might expect from these new "governments in waiting." Furthermore, even if the opposition did have issues and policy programs to offer, because of the CCM's control over the media and civil society groups, attempts by new opposition political parties to reach the bulk of the citizenry would be rendered largely ineffective under current conditions.[50]

Leaders of the new political parties interviewed for this study, including the chairman of NCCR - Mageuzi,[51] and one of the leaders of CHADEMA, Dr. Kaborou,[52] blamed the ineffectiveness of the new political parties on the persistent, autocratic and repressive legal and political framework in Tanzania. They argued that if the rule of law and respect for pluralistic democratic principles were operational in Tanzania, then the new political parties would be effective in their attempts to institutionalize themselves and develop a grassroots base. They conceded that, the constraints of the legal and political framework notwithstanding, power struggles within and between the new opposition political parties were accentuating the weakness of an already fragile opposition. Efforts to unite the opposition as a strategy to increase their competitiveness vis-à-vis the strong, incumbent Chama Cha Mapinduzi have so far failed. Dr. Kaborou predicted that even by the year 2,000 none of the new political parties would be strong enough to form a government. Hence the major role of the new parties, in the interim period, would be that of a "loyal opposition" acting as a check on the government, while trying to build their own organizational and political capacity.

It has also been observed that, apart from their structural weakness, poor linkages to and thin legitimacy at the grassroots level, the new parties seem to have inherited the CCM's authoritarian style. Just like the CCM, they are run by party executives with little regard for democratic practice within their own organizations. Few of the new parties have extricated themselves from the authoritarian model. "It is as if the single party system has simply multiplied itself for as many times as there are new political parties."[53] Other critical assessments have noted that Tanzanian opposition political parties are premised on two things: mutual dislike of the CCM, and camaraderie. But mutual dislike of the CCM is not sufficient to keep people together; once the source of their common aversion is removed, splits become inevitable and camaraderie dissipates.[54]

Political competition in Tanzania is at present at the personal level, and most parties have become highly personalized affairs. This has led to intense jockeying for positions of power within parties and to splits when various personal aspirations are not fulfilled. What the citizenry is offered by many such parties is not a choice between policies but a choice between personalities. As the opposition parties proliferate, so does the disunity among them. There are now not only differences and splits between but also within opposition political parties. NCCR-Mageuzi, for example, was only in March 1994 classified among the four major opposition political parties (Mmuya: 1994); by June 1994, it was greatly weakened by internal power struggles and splits among the top leadership. People in Tanzania who initially hoped the opposition would spearhead the expected democratic transition, are disappointed by the disunity within the opposition. Many question the merits and political gains to be derived from numerous political parties whose leaders seem only to be power hungry individuals. This individualistic desire to grab power, in the view of many ordinary Tanzanians, is the major reason why, despite their structural weakness, the opposition parties have failed to form a single united front that could effectively compete with the CCM. Power struggles have appeared in the opposition camp each time these parties have attempted to form a common front. Mmuya and Chaligha have noted that attempts to form a common front have "disastrously gone into bickering and acrimonious mudslinging campaigns among the opposition ... calling each other common cheaters, saboteurs, stooges and many other negative innuendoes."[55]

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[50] Munishi, Gasper. K. "Politics and Competition at the Crossroads of Liberalization and Democratic Transition In Tanzania". A paper read at the First Regional Conference on Law, Politics, and Multiparty Democracy in East Africa. October 17-23, 1993. University of Dar es-Salaam.

[51] Interview: June 9, 1994.

[52] Interview: March 1994.

[53] Mmuya, Max. "The Set up of the New Political Parties in Tanzania" A paper presented at the Functional Dimension of Democratization Process in Kenya and Tanzania. 1994.

[54] Cited in Tambila, Kapwepwe. I. "The Transition ... Op. Cit p. 19

However, while Tanzanians are critical of the character of the opposition parties , they are also critical of all of the other parties, including the CCM. Indeed, by June 1994 many in Tanzania believed that the main aim of all political parties was to go to State House and, for those already there, to remain there. Their aim does not appear to them, at least, to be the emancipation and democratization of society. It is for that reason, the argument goes, that some party leaders in Tanzania ardently support the existing constitution and laws which limit the proper functioning of the democratic ideals. That is why the situation in Tanzania is termed by some as "a move from one state party to many state parties," all of which want to maintain the authoritarianism and privileges of the current regime.

The new political parties lack an adequately large, permanent power base in civil society with strong grassroots linkages and legitimacy. They are small, weak, numerous, and, in opposition. Munishi (1993) notes that: "The current opposition parties are too 'minor', disintegrated and uprooted. Under present conditions they can hardly find economic and political bases in the national civil society at large." However, the proliferation of political parties indicates the zealousness of the Tanzanian people to participate in the political process and to exercise their freedom of association and assembly. By July 1992, 43 opposition groups had taken the forms to register as political parties. As of June 1994, 11 of these political groups had been registered as parties.

Despite the general weakness of the new political parties in Tanzania, Mmuya classifies them (in a rather male chauvinistic manner) into Major - Vyama Dume (Male parties) and Minor - Vyama Jike (Female Parties). Of the 11 new political parties registered as of April 1994, he identified four as major parties, namely: NCCR-Mageuzi, CHADEMA, CUF and UMD. He uses a four-point standard to classify them as such:

(a) citizen knowledge and (awareness) of their party's existence;
(b) degree of political penetration;
(c) degree of participation and party activity; and
(d) how the CCM, the incumbent party, ranks its opponents.

While opposition parties fumble and grope, the ruling party is already engaged in a serious campaign to retain power, using the immense resources at its disposal to win the majority of the people to its side. According to Bagenda, the CCM is "waging a deliberate campaign to disinform (*sic*) and disorient people from the course of change, unsettling uneasy consciences and intimidating the daring ones."[56]

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[55] Mmuya, Max. and Amon Chaligha. **Towards Multiparty Politics** ... Op. Cit. p.90.

Assessing the nature and process of multiparty participation towards the end of 1993, Peter arrived at a conclusion which remained largely valid in mid-1994:

> *Given this set of affairs whereby some are already ahead of others, there can hardly be said to be good grounds to promote fair play in the political arena in Tanzania. Therefore, there is a need for the government and the ruling party to act fairly in order to prove its genuineness in the introduction of multipartyism in the country. It is not simply a question of preparing the laws that will enable a party to win elections and retain political power. It is a question of building democratic institutions and a democratic culture which will outlive the current epoch and save future generations in this country.*[57]

3.3 FREE AND FAIR ELECTIONS

If one accepts that free and fair elections are based on the existence of democratic institutions that provide an enabling environment for competitive politics, the untethered exercise of freedom of expression, association, and assembly, one can argue that, during the thirty years of single party rule, there were no free and fair elections in Tanzania.

In addition to the monolithic, single-party political system, state centralization and absolute control over most civil society institutions, the single-party-tailored electoral laws, procedures and electoral institutions did not provide a framework for holding free and fair elections in Tanzania.

Indeed even the 1990 elections in Tanzania, the last held under the one party political system, were far from being free and fair. Despite the post-1985 economic liberalism that was already being implemented, economic pluralism had not yet translated into political pluralism. At best, the 1990 General Elections were assessed as representing "continuity in change," meaning that, while the main patterns of power remained in force, certain changes occurred with regard to candidates who made it into parliament.[58]

The reintroduction of multipartyism has broadened the basis of political participation, facilitated some measure of state tolerance to dissenting voices, and relaxed control over such civil society groups as the media, NGOs and Trade Unions.

However, in regard to the electoral process, there is still no evidence of state disengagement from its previous control over the electoral machinery and process. Thus, whereas the *Election Act* (1992) was amended to make it consistent with the multiparty system, the conduct of the four by-elections held as of July 1994, failed to exhibit progress towards attaining normal standards for free and fair elections, primarily because of an uneven playing field for all political parties.

The root of this problem is the continuing state control of the political process and the failure to disassociate the government from the ruling party. Consequently, the organization and operation of the new political parties is hampered by certain practices of the CCM and the local administration. They have firm control over the majority of the people at the grassroots level and enjoy a virtual monopoly over such strategic, state-controlled resources as the electronic media (Radio Tanzania). The state also has the power to license political rallies. Members of the opposition have repeatedly complained of being deliberately denied by district authorities licenses required to address political meetings, especially for campaign purposes. Both opposition candidates and election observers of the four multiparty by-elections held to date have issued reports of unfair election practices. In at least one case, they have occasioned the petitioning of the by-election results by the CHADEMA candidate, Dr. Kaborou. As discussed elsewhere in this report, in August 1994, the high court upheld this petition and nullified the Kigoma by-election results. This is a positive sign for democratic development in Tanzania, and indicates a measure of independence of the judiciary.

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[56] Bagenda, P.M. "The Relationship Between the Party in Power and Opposition Parties." A paper delivered at the Seminar on the Functional Dimension of the Democratization Process in Africa. Dar es-Salaam March 28 - 30, 1994. Friedrich Ebert Stiftung.

[57] Peter, C.M. "Determining the Pace ... Op. Cit pp. 48-49.

[58] Mukandala, R.S. and Haroub Othman. (eds) **Liberalization and Politics: The 1990 Elections in Tanzania**. Dar es-Salaam: University Press. 1994. p. 257.

Another impediment to free and fair elections during the past two years of multipartyism is the apparent ineffectiveness of the National Election Commission (NEC) in restraining government excesses. Senior opposition leaders have indicated their lack of faith in the Electoral Commission as a body that can competently and impartially conduct free and fair elections. A member of the NEC even admitted to the Commission's lack of autonomy and capacity, citing as problems government interference in the work of the Commission and a lack of independent funding.[59]

The chairman of the Electoral Commission does not share these views. He has portrayed the Commission as being characterized by "tolerance, understanding, dedication, transparency and integrity" in performing its duties. While he does accept its functional limitations, he argues that the Commission is doing its best to fulfill its mandate. For example, he notes that civic education is a "high priority area" in the electoral process. In a keynote address to a National Seminar on democratization in March 1994, he stated *inter alia*:

> *We are keenly aware of the efforts by various people and institutions involved in moves to educate people and prepare them for greater democratic participation. We in the Commission are painfully aware of the constraints we have experienced in this regard and we are not so naive as to assert that we have done enough. We have taken some steps in this direction but we cannot pretend that we have gone far enough yet. We are gearing up for more activity in this important field.*

He further enumerated the activities undertaken by his Commission including the promotion of dialogue and discussion, explaining the mechanics of voting, and producing a Kiswahili version of the Electoral Laws. In regard to the latter, he noted that the Commission would soon be able to circulate the Kiswahili version to interested parties after "the relevant authorities" have examined it. Translation of the laws relating to the election of the president and members of parliament were also under way and there were serious plans to start voter education.[60]

3.4 Civil Society and the Governance Process

The Tanzanian state party demobilized civic organizations in the early, mid-, and late sixties, dominating them for practically thirty years. Trade unions, peasant cooperative societies, civic organizations, sports clubs, youth and women's organizations, were all put under party and state control in one way or another. Only church organizations remained free to operate without interference. But then, Tanzanian religious denominations were better known for their docility than their radicalism. According to Munishi, civil society organizations administered and controlled by the regime in power were nicknamed: *Captured and Administered Mass Organizations* (CAMOs). CAMOs included: the Cooperative Union of Tanzania (CUT), the Tanzania Parents Association (TAPA), the Tanzania Women's Organization (UWT), the party's youth league (VIJANA) and the Tanzanian Workers' Organization (JUWATA), formerly the Tanganyika Federation of Labour. These were captured and effectively controlled by the single-party regime. They were made to behave as statutory bodies, and drew substantial support (including finances) from the state treasury. In this regard they could not be considered to be effective organizations of the civil society to which they belonged. They became the state and the party's organs for political mobilization.

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[59] Interview: Mr. Ben Lobulu, Member of NEC. April 21, 1994.

[60] Makame, L.M. (Hon) Keynote Address at the Workshop on the Functional Dimension of the Democratization Process in the African Region. March 28-30, 1994. Dar es-Salaam.

P.M. Bagenda describes the "captured civil society" succinctly when he notes that "the single party state did a thorough job of destroying independent civic organizations and removed them from the political scene as alternative centres for the power struggle." Furthermore, the underdevelopment of the civil society destroyed the chance to develop organizational consciousness among enlightened groups of people; while for many the socialist promise of "social equality" and "social justice" was to many as tempting and captivating as it was effective in killing individual initiative.[61]

Mobilization strategies using CAMOs were extended to capture other forms of political and economic organizations which should have been based in civil society. Radio and newspapers became CAMOs. Even small-scale business and industrial organizations became part of the state system. The ruling party effectively used CAMOs to expand both the functions of the regime and the state.[62]

The best-known civil organizations in Tanzania are the cooperative unions and the trade unions. Both had been very seriously destabilized and controlled. The former were even disbanded in 1976, and then reestablished in 1982. They continued to be controlled and appointed by the state bureaucracy until 1990. Through a process of threats and boycotts the cooperatives reasserted themselves between 1990 and 1993, and the undemocratic Cooperative Union of Tanzania, led by its Secretary General, David Holela, was disbanded in April 1993. Cooperative Union leadership remains problematic, and democratization remains to be established.

The autonomy of trade unions remains problematic. The CCM, while opening up politically, decided to legislate the establishment of a single trade union organization, the Organization of Tanzania Trade Unions (OTTU). To date it remains unclear whether OTTU is a state entity as it used to be, or whether it is now actually an autonomous workers' body. The running battle between OTTU and CHAKIWATA, an independent, professional teachers' organization which wanted to form an independent teachers trade union, brought to the fore the weaknesses and undemocratic nature of the whole of OTTU as a workers' organization. Youth, women and other organizations are still groping in search of autonomy.

Currently, many non-governmental organizations (NGOs) operate in Tanzania, and there is an umbrella organization known as the Tanzania Association of Nongovernmental Organizations (TANGO). By 1990, 163 NGOs were registered with TANGO but many others, including several local NGOs and a few foreign ones based in Tanzania, are still not registered with them. Most NGOs kept a low profile during the years when civil society was demobilized, with a few notable exceptions–the Law Society of Tanzania, which from 1983 became very vocal on constitutional issues, and actually led the debate on democracy in the late 1980s and early 1990s; and UDASA, on basically the same issues. The other is CHAKIWATA, referred to above, which spearheaded the struggle for the real autonomy of trade unions, with specific reference to teachers.

According to Tambila, many NGOs still "don't have loud voices" because they are engaged in distributing social welfare in the internationalized context of welfare distribution. They operate either as local channels of international aid, or as locally based northern NGOs dispensing aid directly. He notes that most local NGOs are elite organizations and have not emerged as a result of people's needs. Others originated as church-based organizations, viewed by the international "gift economy" as "clean" agents. Yet others are government-inspired organizations established to obtain aid. The latter, termed *GONGOs* (Government Non-governmental Organizations) are elite organs created to mobilize donor funds, mostly for private accumulation.[63]

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[61] Bagenda, P.M. "The Relationship Between ... Op. Cit. p.4.

[62] Munishi, Gaspar K. "Politics and Competition ... Op. Cit.

The above notwithstanding, autonomous, democratic civil organizations are now slowly emerging, but a long struggle lies ahead.

3.4.1. CIVIC EDUCATION

The lack of civic education and general awareness of rights is a major impediment to the participation of the predominantly rural Tanzanians in the multiparty political system. Accordingly, the *Nyalali Commission* recommended that people be educated on the basics and intricacies of the change to multiparty democracy, and the rights and responsibilities as citizens in a multiparty context. The government has not assumed this responsibility except to encourage citizens to be loyal and partisan to the CCM. Opposition parties have undertaken some civic education, but on a limited scale, due to inadequate resources, and constraints placed on their public activities by the government. Civic education by the opposition parties has thus generally taken place at public rallies when the new political leaders tour the country to "sell" their parties to the people, and during electoral campaigns for the few by-elections that have been held during the multiparty era. New political parties are further constrained in their civic education activities because they have not created strong bases of social and political support. NGOs and other civil society groups had begun to play a part in civic education by mid 1994. Their role in this area, if accelerated, could become crucial to empowering the people to participate effectively in the current democratic process.

3.4.2 THE ROLE OF THE INTELLIGENTSIA

The Intelligentsia–defined here as professional academics, teachers, lawyers and post-secondary school students working in training and research institutions–are an important sector of Tanzanian civil society. Their role as "manufacturers" of scientific knowledge puts them in a strategic position to provide guidelines for social change. Tanzanian intellectuals, like other members of civil society, seem to be emerging from being marginally involved in the democratization struggle at the onset of multipartyism to, in 1994, of being directly and actively involveed in the effort to establish plural democracy.

In regard to marginal involvement, a professor of political science at the University of Dar es-Salaam, writing on the role of the intelligentsia in the democratization process at the end of 1993, expressed pessimism on the role of the Tanzanian intellectuals, especially those operating at the nation's highest institution of learning, the University of Dar es-Salaam. His assessment was that, whereas the new situation under multipartyism shows an increase in popular participation in politics, there is a marked reluctance among the intelligentsia to participate in political organizational tasks. He describes this as a legacy of the single-party era. For example, the vibrant and creative intellectual debate on the state, class and imperialism at the University of Dar es-Salaam in the 1960S and 1970s, was dominated conspicuously by non-Tanzanians; most Tanzanians assumed a low profile in the debate. Intellectual engagement in the current process has also been "muted, anecdotal and intermittent." To date (1993) no intellectual movement exists and if an intellectual current exists, it is mainly informed by cynicism and, to some extent, resignation. Furthermore, leadership of most of the fledgling political parties is not provided by intellectuals. This explains in part the slow pace and low level at which social and economic problems have been charted and possible solutions proposed by the new parties.

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[63] Tambila, Kapwepwe. I. "The Transition to Multiparty ... Op. Cit.

He further observes that the average intellectual in Tanzania either fears or shuns politics. A good indication of this is the lack of significant debate and discussion on the Nyalali Report. One would have expected vigorous debate to ensue in the wake of the *Nyalali Report*, particularly on: constitutional transition, the forty repressive laws, the role of the National Election Commission, the constitutional assemblies and education for democracy, all of which are recommended in the report. No sustained debate has emerged on these or other issues. Instead, the CCM government has quietly amended the constitution and appointed the National Electoral Commission without any consultation with the opposition parties or other interested members of society. Consequent to this state-managed action no significant protest or popular demand for a white paper have emerged from the intellectual community . Furthermore, the average intellectual is neither a CCM supporter nor a member of any political party; to this extent, he or she is no less a victim of Tanzania's quiescent political culture than the non-intellectual majority.[64]

Baregu's observations were largely reflective of the situation at the time of his writing, October 1993. But the political situation in Tanzania has been very dynamic. By mid-1994 there was a sense of vibrancy and intellectual involvement in the multiparty democratization changes taking place. Seminars and workshops on the general theme of multiparty democracy were being organized by intellectuals at the University of Dar es-Salaam. The Department of Political Science for example, had already organized three seminars on the state and multiparty politics during the first six months of 1994. In June 1994, a woman who is a Professor at the Economics Research Bureau of the University of Dar es-Salaam, organized a successful national women's conference on the theme of *Gender in Multiparty Democratization.* Furthermore, several academics, including Baregu and Shivji, have become more activist, as demonstrated in their contributions to the democratization debates in various media.

International donors appear keen to support these new intellectual initiatives. In March, 1994, Friedrich Ebert Stiftung (FES) sponsored a national conference on the theme *Functional Dimensions of Multiparty Democracy.* Several similar seminars have since been held. FES sponsored another conference: *Empowering Women in The Process of Democratization,* in Dar es-Salaam in early September 1994.

The above trend notwithstanding, one cannot generalize on intellectual activism in Tanzania. Many intellectuals, on the "Hill," and elsewhere, still prefer to provide armchair and technocratic contributions to the current transformation.

3.5 THE MEDIA AND PLURAL DEMOCRACY

The right to hold and express opinions freely, to seek, receive and impart information and ideas through any media is a universally recognized basic human right.

Similarly, since time immemorial, it has been recognized that information is power. The print and electronic media are formidable weapons for fighting oppression and protecting basic rights.

Mwalimu Nyerere realized, a long time ago that there cannot be democracy in the absence of a free press. On January 1, 1960, he said:

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[64] Baregu. Mwesiga. "Activism. Apathy and Conformity: Intellectual Responses to Political Changes in Eastern Africa" A paper read at the First Regional Conference on Law Politics. and Multiparty Democracy in East Africa Dar es-Salaam. October 17- 23.1993.

> *A free press is an integral part of any democratic society, and whether or not one agrees with the views of any individual newspapers, the freedom of the press is nevertheless something which must and will be safeguarded.*

Despite this view, Mwalimu Nyerere never, during his long reign, did permit a free press, for he also knew that newspapers and radio are lethal weapons in the hands of the opposition. Accordingly, TANU decided in 1970 that it would directly supervise the mass-media. It formed a Mass Media Sub-Committee of the Central Committee to review the work of the press and radio and to provide political guidance.

In November, 1973 Mwalimu Nyerere himself presided over a mass media seminar, held in Arusha "to ensure a collective stand among the mass media." The motive for the establishment of SHIHATA in 1976 was sinister. SHIHATA became the sole legal collector and distributor of all domestic and foreign news published in Tanzania. Although the intention was to give the news a common ideological complexion, SHIHATA ultimately was unable to perform this role.

Multipartyism in Tanzania has not yet led to the transformation of the structures which control and censor the media, but it has permitted the number of new newspapers and magazines to mushroom to at least 24 as of June 1994.

This proliferation has occurred gradually over seven years. For much of the post-Arusha Declaration period, the print media were restricted to the government-owned, English-language daily newspaper, the *Daily News*, its weekly sister, the *Sunday News*, the Party's Swahili daily *Uhuru*, and its weekly sister, *Mzalendo*. The trade union movement also had a weekly Swahili paper, *Mfanyakazi*, whose editorial line differed slightly from the official one. There were also a few other newspapers, such as *Kiongozi* and *Mizani*, published by religious organizations.

With the advent of liberalization in the 1990s, it became possible to distribute foreign publications such as *Africa Events*, *New Africa*, and *African Business*. These introduced a different perspective and were a forum for expressing views and ideas from Tanzania which differ from the official ones.

In the late 1980s, as the liberalization process continued, state monopoly of the media was relaxed, and two private newspapers were launched–*Business Times* in 1987, and the *Family Mirror* in 1988.

The most dramatic change in the media followed the announcement of the transition to multipartyism in June 1992. More than a dozen newspapers were launched, although some of them appear only irregularly. The most consistent Swahili ones include: *Dimba*, with a circulation of 20,000, *Mwanainchi*, circulation 15,000, *Rai*, 12,000, *Majira*, with a daily circulation of 6,000, and *Watu*. Among the English publications, two new papers have been launched in the post-1992 period, *The Express* and *The Post*.

A journalists' association, (TAJA), has been in operation since the state monopoly era. It is currently experiencing the tension of accommodating the demands of the private media. There are also other media associations which publicize issues of specific concern. The Tanzania Media Women's Association (TAMWA), formed in 1989, deals with issues of violence against women, the legal rights of women, and sexual harassment; the Journalist Environmental Association of Tanzania, formed in 1991, focuses on issues of environmental concern, such as the unsuccessful opposition to the building of the Sheraton Hotel on the Gymkhana grounds, the construction of a pesticide plant in Moshi, the location of a garbage dump near a school, and pollution in Lake Victoria.

The advent of an alternative press has resulted in a sharp decline in the circulation of the state-controlled media. More importantly, it has provided a mechanism to expose both economic and political abuses, as well as the violation of human rights and democratic principles. Private newspapers have brought to public attention such scandals as: illegal land sales by government officials, Zanzibar's application to join the Islamic Organization Conference, and violations of the Open General License. The alternative media has led the way in exposing discrepancies in the management of the liberalization process as well as the fundamental weaknesses of the system. Portraying themselves as non-partisan, they have tried to balance information coverage by publicizing opposition views.

Despite these positive developments, the Tanzanian government's policy regarding the media remains unchanged. The Newspaper Act that regulates the press remains intact, and, there has already been an attempt to pass a bill to control further the media. So far it has been met with resistance by professionals and the diplomatic community and has been shelved for the time being.

The press also faces severe infrastructural problems–poor distribution networks, especially outside Dar es-Salaam, inadequate transportation, communications equipment and other facilities. Most journalists have little or no formal training.

The legal and regulatory environment also contributes to the media's difficulties. For example, the government levies a forty per cent tax on paper and printing materials, which increases the cost of production. Similarly, the 1976 Newspaper Act which remains in effect empowers the government to control the press and hide public information under the cover of the "State Secrets Act". Obtaining information about government actions or plans is considered to be a privilege rather than a right, a provision which shields public officials from criticism and accountability.

The Tanzania News Agency Act (no. 14 of 1976) empowers the minister responsible for information to refuse, revoke or suspend any authorization without giving any reason. Decisions of the minister cannot be challenged in a court of law. This provision fetters the media, forcing them to second-guess what the minister will allow to be published.

While the print media have undergone the most dramatic change in the multiparty era, the electronic media have also experienced some transformation, especially during 1994. In terms of outreach and effectiveness at the grassroots level, the government-controlled Radio Tanzania remains the single most important and effective medium of mass communication. There are at least three private radio stations in mainland Tanzania and one in Zanzibar. There are also several new efforts to establish community radio stations, including a women's community radio station that would address social, economic and political issues of concern to women. These private initiatives, if allowed to operate, may eventually break the monopoly of Radio Tanzania which, by mid-1994, was the only station that could broadcast nationally. The creation of a government-appointed National Broadcasting Commission in 1993 to regulate this sector suggests government might be reluctant to cede its monopoly.

The privately owned CTN, which began broadcasting in March 1994, was the first television station to be granted a license to operate on the mainland. There were at least three more TV channels in Tanzania and Zanzibar as of August 1994. As well, as many as twelve licenses have been granted for more TV channels. Access to TV sets remains for the most part an urban privilege, confined mainly to Dar es-Salaam, the elite and business people.

Our overall assessment is that the quality and effectiveness of the print media in disseminating information to the majority of Tanzanians, especially those living in rural areas, is marginal. As already noted, most of the private print media are of limited circulation, with their readership confined to urban areas, specifically Dar es-Salaam. Moreover, most of the new newspapers are weeklies, not dailies. The government might be using its power for newspaper licensing to obstruct the establishment of more daily newspapers. This view was expressed by the editor of the newspaper *Mwanainchi*, who said he has been waiting for a year to obtain a license to operate as a daily newspaper. As of June 1994, the license had not been granted. He felt that government was afraid of any competition from other daily newspapers to the *Daily News* & *Uhuru*. While admitting that some of the new newspapers lacked credibility owing to their proclivity to focus on cheap, sometimes inaccurate stories, he was convinced that the new print media were playing a positive role in the democratization process. Their exposure of the ills in government and society at large, their focus on issues pertinent to multiparty democracy, human rights, and so on was an important way to raise people's awareness about their rights and responsibilities. His sentiments were shared by the chairperson of TAMWA,[65] who viewed the mushrooming of print media as a positive sign in the era of plural democracy, but cautioned that the media might not attain their optimal effectiveness unless the journalists form a strong union to replace the toothless TAJA. ▬

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[65] Interview: Fatima Aloo. 7 June 1994.

Consolidating Fundamental Rights: The Case of Gender, Culture, Security and Welfare

In the final analysis, a democratic framework for a state-society linkage protects and promotes the fundamental rights of every person in society. State legitimacy, as well as fostering accountability and legality, are meaningful to society only in so far as they nurture and advance the full integrity of the individual. Therefore, the existence of a plurality of parties and competitive electoral systems, are not, in themselves, a guarantee of democratic development if they do not contribute to the uplifting of the totality of fundamental human rights.

Similarly, increasing popular participation and expansion of the space for civil associations is almost tantamount to regimentation if these institutions undermine the political and civil, as well as the social integrity of the people. The experience of the old Soviet Union demonstrates the possibility of having multipartyism and a proliferation of civil associations, but with an entire framework which negated and blatantly violated basic human rights. Equally, the experience of advanced western countries exhibits the full spectrum of liberal democratic institutions while, at the same time, basic welfare rights are treated as a privilege.

In this section we shall attempt to examine the legal and institutional framework for the protection of fundamental rights in Tanzania, and the extent to which the steps taken during the democratic transition consolidate or undermine these rights. For the purposes of this report we shall focus on four basic rights only: gender, cultural, security and welfare.

4.1 INTERNATIONAL COVENANTS AND THE BILL OF RIGHTS

Tanzania is a signatory to the major international human rights instruments in the civil, political, economic and social sectors. The following are the major covenants ratified by Tanzania[66]:

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[66] **Human Rights Update**, Issue No.14, October 1993, p.11.

1. International Covenant on Economic, Social and Cultural Rights
2. International Covenant on Civil and Political Rights
3. Convention on the Prevention and Punishment of the Crime of Genocide
4. Convention on the Rights of the Child
5. International Convention on the Elimination of All Forms of *Racial Discrimination*
6. International Convention on the Suppression and Punishment of the Crime of Apartheid
7. Convention on the Elimination of All Forms of Discrimination Against Women
8. Convention on the Political Rights of Women
9. ILO Convention No.98 Right to Organize and Bargain Collectively
10. Additional Protocol (Geneva Conventions) Protection of Victims of International Armed Conflicts
11. Additional Protocol (Geneva Conventions) Protection of Victims of Non-International Armed Conflicts
12. Protocol on the Status of Refugees
13. African Charter on Human and Peoples' Rights

Tanzania has not ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention No.87 Freedom of Association and Protection on the Right to Organize; ILO Convention No.138 on the Minimum Age for Admission to Employment; or ILO Convention No.107 on Indigenous and Tribal Populations.

A Bill of Rights was incorporated into Tanzania's constitution 23 years after independence. It was not incorporated into the independence constitution on the grounds that, "A Bill of Rights merely invites conflicts of luxury which we could hardly afford to entertain ... "[67]

In 1964 the Tanganyika Law Society presented a memorandum to the Presidential Commission inquiring as to how to establish a one-party democracy. Among other things, the memorandum suggested that a Bill of Rights should be included in the new constitution. The suggestion was ignored. Fundamental rights were provided in a general form in the preamble to the Interim Constitution, which is technically not part of the basic law.

Some legal experts have observed that the interim constitution of 1965, appended as a schedule to the constitution of the ruling party, contained provisions on individual rights and freedoms. It is suggested that, technically, a schedule is part of the constitution and therefore one could protest against the violation of rights using its provisions.[68]

During the fifth Constitutional amendments in 1984, 30 provisions conferring basic rights and freedoms associated with equality, enjoyment of life, freedom of conscience, and freedom of work were added to the constitution. In addition, 11 provisions specifying basic duties associated with work, abiding by the law, the safeguarding of public property, and national defence were also incorporated. However, the clauses remained empty slogans on paper until 1988 when they became justiciable.

Detailed analysis abounds on the human rights situation and Tanzania.[69] For the purposes of this report, two related issues will be addressed: the juridical status of the bill of rights, particularly the extent to which it protects human rights and freedoms and establishes an environment conducive to the development of a democratic society; the respect accorded by state and civil institutions, in their routine practices, to the basic norms enshrined in the bill of rights, and the patterns of violations and their impact on the democratization process.

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[67] Quoted in Peter, Chris. "Respect for Fundamental Rights and Freedoms: A New Bill of Rights for Tanzania" (mimeo) p.256

[68] Ibid. p.257

[69] Shivji, I.G..1990. "State Coercion and Freedom in Tanzania". **Human & Peoples' Rights** Monograph Series No 8. Institute of Southern African Studies, National University of Lesotho: Nyange,H.H. "Legislative and Judicial Implementation of the Norm Against Torture: The Case of Tanzania", Vol.27 **Indian Journal of International Law**: Kapinga, W.B.L. "The Police Force and Human Rights in Tanzania", in **Third World Legal Studies Journal**, 1991: Peter, C.M. "Respect For Fundamental Rights and Freedoms: A New Bill of Rights for Tanzania", Vol.67 **Revue de droit international**, October-December 1989

There is a general consensus that the incorporation of a bill of rights in the constitution provides a protective shield for society, and legal recourse when the integrity of the person is threatened. But the protective effectiveness of a bill of rights depends on both the capacity of the judiciary to safeguard basic principles, and the juridical consistency of the enshrined bill. Since the subject of judicial independence has already been addressed in this report, we shall turn to the consistency issue, within the context of the four sets of rights: gender, cultural, security and welfare.

4.2 GENDER RIGHTS

In arguing for gender rights and the principle of non-discrimination, one affirms that women's rights are human rights.

The International Human Rights Conventions ratified by Tanzania include those that focus specifically on gender discrimination, namely: the Universal Declaration on Human Rights (1948), the Convention on the Political Rights of Women (1953), the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979); the African Charter on Human and People's Rights (1981) and the Nairobi Forward Looking Strategies (1985).

The lack of a bill of rights until 1984 meant that for 23 years after Tanzania became independent, the basic rights and freedoms of both women and men were not guaranteed, including the right to life, equality and protection against all forms of discrimination on account of sex, gender, race, ethnic group, colour, language, religion, political ideology or any opinion. However, even after the provision of the bill of rights, gender discrimination remained. In this regard, although section 13 of the Tanzanian constitution guarantees the right to equality, it does not explicitly outlaw discrimination based on sex. This omission has created ambiguity on the status of women's rights, and adequate grounds for gender-based discrimination in legal and social practices.[70]

The revised 1971 *Marriage Act* and the *Succession Act* create more problems than they resolve for women in matters of marriage and divorce, inheritance, and so on. The continued coexistence of common law and customary law as well as the contradictions between the two obstruct women's ability to utilize even the limited rights provided under these two Acts. For example, theoretically under the Marriage Act, married women share the same rights to property as men, and hence have a life-interest in property acquired before and during marriage. On the other hand, under customary law, which applies to and binds the female majority, a woman cannot inherit property after the death of her spouse. Similarly, whereas under common law, women are entitled to a share in the division of matrimonial property and profits from its sale after divorce or separation, matrimonial property remains subject to community and customary considerations. Furthermore, while the law provides for the division of property acquired during marriage, which should take into consideration the contribution of each spouse to joint acquisitions, domestic work, primarily provided by the female spouse, is generally not regarded as a contribution. This is despite the existence of a legal precedent, whereby the Court of Appeal upheld, in the case of *Bi.*

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[70] United Republic of Tanzania. **The Constitution of the United Republic of Tanzania**. 1977. Dar es-Salaam: Attorney General's Office. October 1990. p16.

Hawa Mohamed v. Alisefu, Civic Appeal No. 9 of 1983, that the domestic services of a spouse amounted to a contribution towards the acquisition of matrimonial assets for the purpose of *S.114 of the Law of Marriage Act of 1971.* This legal position is often flouted because of the ambiguity of the definition of contributions and joint acquisitions.[71]

Other indications that neither the bill of rights nor section 13 of the constitution adequately safeguard women's rights in Tanzania can be found in the areas of health and violence against women. There are no specific laws protecting the health of women despite the fact that women's health is more at risk than men's, given the multiple roles they perform in production and reproduction. In this regard, while Tanzania grapples with the rapid spread of AIDS, there is mounting evidence that women in Tanzania are more vulnerable to the disease than men, not only because of their physiological make-up, but also because they bear the major burden of caring for AIDS patients.[72] According to the country's national AIDS control program, the general male-to-female ratio of HIV infection stood at 1:5 by end of 1993 and, by the year 2000, it is expected there will be more HIV-infected women than men.[73]

Furthermore, rising incidents of reported (and unreported) cases of women rape victims,[74] increasing numbers of women in the sex industry,[75] sexual harassment and wife abuse have not only exacerbated the vulnerability of women from a health standpoint, but also broadened the arena of women's disempowerment in asserting their rights.[76]

The existing legal framework does not contain adequate safeguards to protect women's rights in this area. Even where provisions exist, the machinery to implement measures is weak, while retrogressive customary laws and practices hinder the protection of women from physical and mental abuse.

In regard to violence against women, Tanzania's Law Reform Commission (LRC) in 1994 documented numerous cases in which Tanzanian women had been denied justice on matters of violence against them. The Law Reform Commission pointed out that the denial of legal justice in matters of rape, defilement, sexual assault, wife abuse and so on was not due to the deficiency of the law itself, but to the practice and weakness of the implementing machinery. It noted several shortcomings in Tanzania's legal system in regard to protecting women from assault. The Commission noted that "although under our Penal code, the offenses of rape, attempted rape, and defilement of a girl under 14 years carry a maximum penalty of life imprisonment, the practice has, except for the offense of defilement, been severely whittled down.[77] In the majority of cases, actual sentences have only been a fine or imprisonment for up to 5 years. The 1994 LRC report notes that the low sentences imposed by the courts on the convicts are due to a combination of factors, including a lack of appreciation for the gravity and nature of the offense; the strict application of the requirement of corroboration of the evidence of the complainant woman, where she is likely to be the only eye witness, without due regard to and assessment of the credibility of her own evidence as is the case in respect of other offenses; the failure of courts to award compensation to the victim in cases where the offender is found guilty; and the problem of requiring the victim of a sexual offense to testify in an open court, a practice that tends to inhibit her from telling all that she knows.

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[71] Peter, C.M. "Five Years of the Bill ... Op. Cit. Also interviews with C.M. Peter and Hamida Sheikh

[72] **Sunday News** (newspaper) Dar es-Salaam, March 6, 1994.

[73] **The Express** (newspaper) Dar es-Salaam, October 28-30, 1993.

[74] **Sunday News** (newspaper) January 16, 1994.

[75] **Sunday News** (newspaper) October 1993.

[76] **Sunday News** (newspaper) January 16, 1994.

[77] Law Reform Commission. **Criminal Law Reform Project On: Criminal Law as a Vehicle for the Protection of the Right to Personal Integrity, Dignity and Liberty of Women in Tanzania: Need for Reform** Dar es-Salaam - Law Reform Commission (Background Paper) 1994: 5

In view of this, the LRC report concluded in regard to the criminal justice system in Tanzania on matters of violence against women in Tanzania, that there is no problem with the substantive provisions of the criminal law:

> *It is the procedural aspect of our law and the judicial application or interpretation of both such substantive and procedural laws that appear to have failed to give effective protection to the dignity, integrity and liberty of women in our country, by way of eradicating acts of rape, attempted rape, defilement of young girls, indecent assaults and allied offenses against women.*[78]

In addition to correcting the legal deficiencies, in this and other critical areas of gender rights, there is also a need to raise rights awareness and sensitize both women and men, with a view to asserting and promoting women's human rights.

4.2.1. TANZANIA: WOMEN'S RIGHTS IN DECISION MAKING

An important measure of democratic development in any country is the extent to which all its citizens, women and men alike, exercise their equal human rights to participate fully in the decision-making process. Women's participation, therefore, in high-level, public decision-making on an equal basis with men is imperative before any society can claim to be just and democratic. But the trend in Tanzania, as elsewhere in Africa, indicates that women continue to be marginalized in decision-making. Both the legal-political framework and social and cultural practice limit women's capacity to assert participatory and decision-making rights.

From 1965 to 1994, mainland Tanzania had three women ministers, except for the period 1970-1975, when there was one woman minister and 1975-1980, when there were no women ministers. Expressed as percentages of the total, the number of women cabinet ministers in mainland Tanzania in 1965 was 10 per cent then it dropped to 0 per cent in 1975, picked up again in 1980, rising to 9 per cent in 1980 through to 1990 when the reduction in the total number of ministries boosted the women's percentage to 12 per cent, although their actual number remained three in cabinet.

In Zanzibar, where data are available from 1983, the women's share of cabinet posts has been similar to that on the mainland, with the actual numbers and percentages fluctuating over time. Thus, the women's share of cabinet posts was 9 per cent in 1983, dropping to 0 per cent in 1985 and then rising to the all-time high of 21 per cent in 1994.[79]

This gender distribution of ministerial positions indicates that the women's share of ministerial posts in Tanzania is marginal when compared to that of men.

Regarding women's representation in parliament, the record shows that in 1961 mainland Tanzania had six women MPs representing 8 per cent of the total. The number rose to eight by 1970 but the percentage went down to 4 per cent. It rose to 10 per cent by 1980 and to 11 per cent by 1990, with 28 women MPs out of a total of 248 MPs. In Zanzibar, women constituted 11 per cent of the House of Representatives in 1985 and 15 per cent in 1980 (URT: 1992:56). However, if one separates elected and appointed parliamentary posts, it becomes clear that most of the women MPs have been beneficiaries of the quota system rather than winners of regular competitive elections. In mainland Tanzania, only 1 woman was elected to the 1985-1990 national parliament while, in the 1990 national elections, 2 women marginally won parliamentary seats through regular elections.[80] The proportion of women parliamentarians from 1961 to the present reflects a similar pattern of women's marginalization in political decision-making.

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[78] LRC: January 20, 1994.

[79] The United Republic of Tanzania. **Women and Men in Tanzania**. Dar es-Salaam: Bureau of Statistics - 1992, pp. 55, 76.

[80] Kiondo, Elizabeth. **Women Participation in Electoral Politics: The Case of Chilonwa Constituency**. In Mukandala, R. and Haroub Othman ... Op. Cit. p.175.

In the party hierarchy there are generally few women in top decision-making positions. As of 1994, for example, the percentage of women in the National Executive Committee (NEC) and the Central Committee (CC) of the ruling party Chama Cha Mapinduzi (the CCM), has ranged from 0 per cent (for CC) in 1967 to 15 per cent (for NEC) by 1989. Furthermore, only one of the 25 Regional CCM Chairpersons is a woman: 6 out of the 40 Regional Representatives, and only 4 out of the 25 Regional CCM Secretaries are women.

In the new multiparty era, the status of women in the new/opposition political parties is no better than that in the CCM. Although most of the new parties have addressed the question of women's rights and gender issues in their party manifestoes, women's representation in the new parties decision-making hierarchy remains marginal.[82] Indeed, except for the Tanzania Democratic Alliance (TADEA), whose president is a woman, all the opposition parties are led by men. Generaly speaking, when women are allocated an executive position, it is usually in the traditional stereotyped sector. For example, in Chama Cha Demokrasia na Maendeleo (CHADEMA) only the Women and Youth Affairs sector is led by a woman.[82]

In regional and local government, women are under-represented in decision-making positions. Data from six regions–Ruvuma, Mtwata, Iringa, Morogoro, Shinyanga, Kagera and Kilimanjaro–show that women constituted 10 per cent of the members of government village committees, 10 per cent of the 20 regional commissioners; 10 per cent of the 82 district commissioners and 5 per cent of the 82 district executive directors (the key district level administrators); there were no women regional development directors.[83]

In the national bureaucracy, as of 1993, only one out of 20 principal secretaries was a woman, one out of 23 directors of Manpower and Administration, two out of 28 ambassadors, 4 per cent of the 1,636 managers and top administrators (1980) 10 per cent of policy-making economists, 12 per cent of all jurists, 10 per cent of those in top professional positions, except medical, dental and veterinary doctors (12 per cent), and teachers (27 per cent).[84] There are no women commanders of any of the armed forces or women Commissioners of Police.

Indeed, in Tanzania, the majority of women in public sector employment is concentrated at the bottom of the occupational ladder. Nearly 62 per cent of women are at the bottom of the employment scale while only about 0.7 per cent are at the apex of management as directors of Manpower and Administration.[85] Women are largely concentrated in low-skilled, low-paying, powerless professions.[86]

In the judiciary, the women of Tanzania constitute 21 per cent of total personnel but are relegated to the lowest ranks. The highest positions in the judiciary–chief justice and attorney general –are held by men. By 1994 there was one woman in the seven-person highest court of appeal and only one of 34 judges of the High Court was a woman, seven out of 29 principal resident magistrates, 10 of 51 resident magistrates, 21 of 165 district magistrates, and 173 of 834 primary court magistrates.[87]

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[81] Mmuya, Max and Amon Chaligha. **Towards Multiparty Politics** ... Op. Cit. pp. 83-88.

[82] **The Express** (newspaper) June 6, 1994.

[83] United Republic of Tanzania. **Women and Men** ... Op. Cit. pp. 51-54.

[84] TGNP. "Our Histories: Women's Groups/NGOs and Official Programs in Tanzania." Dar es-Salaam: Tanzania Gender Network Project. 1993. p.75.

[85] Shaidi, Joyce. "Sexual Harassment of Women in the Formal Sector: The Case of Tanzania." OSSREA Gender Research Competition Paper, 1994; and TGNP: Ibid. pp.58-59.

[86] TGNP. Ibid. p.173.

[87] Ibid. p.75.

In the attorney general's (AG) chambers, women's presence is relatively larger compared to other professional sectors. Up to 36 per cent of professional and technical employees in the AG's chambers are women. However, all of the top six positions (principal state attorneys) after that of the AG, are held by men. Women are over-represented at the lower levels without decision-making power, namely as assistant parliamentary draftspersons.[88]

In the commercial sector, women's presence as key decision makers is also minimal. By 1988, there was only one woman out of a total of 450 chairpersons of boards of companies and corporations, zero women out of 40 managing directors, and one woman out of 409 general managers of corporations.

4.2.2 GENDER CONSTRAINTS TO WOMEN'S PARTICIPATION IN GOVERNANCE

The most important constraint in the gender sector of this study, are the socio-cultural beliefs and myths, which inform the socialization process, and the gender education and training to which most men and women are exposed from childhood. Sex stereotypes, gender segregation in employment, and the allocation of roles in private and public life are primarily a product of the early socialization process and indoctrination by the societal environment. For example, women's "hang ups" and their lack of confidence in their ability to execute competently public leadership roles arise from this socialization-for-subordination. This is hardly surprising, given that, socio-culturally, the dominant gender ideology in Africa is patriarchy, on the basis of which social relations in general and gender-power relations in particular are structured and practiced. Meena suspects a conspiracy to exclude women from the corridors of power when she suggests that the "structures of power have been deliberately created to limit effective participation of women in the mainstream political process."[89] Furthermore, she notes that, for the majority of Tanzanian women, the drudgery and time-consuming nature of daily survival, make participation in high-profile public life unrealistic, especially during the adjustment period of the 1980s and 1990s:

> *Women's workload in response to the crises has political ramifications. International crisis has made it necessary for women to work harder and longer hours. Time commitments like these detract from time that might be invested in political participation.*[90]

Kiondo has studied women in electoral politics in Tanzania and has noted that women (political) aspirants, unlike their male counterparts, are judged eligible for political office only after they have passed a very thorough examination of their personal lives, including marital status, education, confidence levels, ability to articulate, and level of moral integrity.[91]

This view is shared by Meena et al[92] who found in an earlier study (1988) that women politicians campaigning for constituency seats face organized and open discrimination led by male opponents who deliberately arouse sexist prejudice against them. Fellow women were also found to be ambivalent about women in high office, from village to national level, accusing them of being arrogant or 'masculine.' This may be in part because given women often behave like men in an effort to advance themselves within male-dominated political machinery. This derives from their lack of self-confidence and low self esteem which brings us back to the fundamental problem of socio-cultural conditioning.[93]

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[88] Ibid. p.174.

[89] R. Meena, "Do Women Have an Agenda in the Democratization Process?" Paper presented at a TGNP Gender and Development Seminar Series. Dar es-Salaam, July 22, 1994: 8.

[90] Meena, R. "Crisis and Structural Adjustment. Tanzania Women Politics" in **Issue: A Journal of Opinion**. Vol. XVIII/2 1989.

[91] Kiondo, E. **Women Participation** ... Op. Cit. p. 178.

[92] Meena Ruth et al. **Wanawake katika Siasa na Uongozi Tanzania**. Dar es-Salaam: Educational Publications and Distribution Ltd., 1988.

[93] TGNP. Our Histories ... Op. Cit. p.74.

Perhaps this socio-cultural conditioning explains women's reluctance to participate in party politics, a problem identified by the chair of NCRR. Mageuzi's party has encountered difficulties in trying to recruit women to high levels of party leadership. He strongly defended his party against gender discrimination, arguing that women were unwilling to participate.[94]

In addition to the attitudinal dimensions arising from socio-cultural engineering, lack of access to adequate quality and quantity of formal education is also a major barrier to women's advancement in public life. Research has shown that the more education a woman has, the more likely she is to be employed.[95] Moreover, women's occupational advancement is more closely linked to their educational attainment than it is for men. Men use their educational credentials for entry into jobs, and then rely on job-related experience for advancement. For women, formal credentials remain critical throughout their lives.[96] It is significant to note that the few women in Tanzania holding senior and top decision-making positions have all attained a high level of education, clearly a demonstration of the importance of education for women's professional advancement.

But the reality in Tanzania and most African countries is that the majority of women do not attain the quantity and quality of education necessary to compete effectively for job opportunities with men. A combination of dropping out of secondary school (mainly due to pregnancies), parental attitudes and sexist curricula that orient female students towards domestic-related art subjects instead of science- and technical-based subjects, marginalizes women in an increasingly technical job market. Essentially the structures of formal education contain a gendered structural bias which ensures that the quantity and quality of education accessible to the majority of women is inappropriate and or inadequate for participating in or occupying hegemonic positions in public life.

The institutional and policy framework for gender action Tanzania, as in other African countries, has demonstrated more rhetoric than action. As with all other issues that government does not consider to be essential for the survival of the political regime, the gender question has been historically marginalized, patronized, manipulated and wooed, as befits political expedience at any given period. At the institutional level, the government-controlled Women's national machinery–Umoja wa Wanawake wa Tanzania (UWT)–whose objective is to coordinate and dispense supportive services and resources to all women's organizations, constitutes a small department in one of the least important (and highly under-funded) government ministries–the Ministry of Women's Affairs, Youth and Community Development. The institutional and policy framework of UWT makes it impossible for it to be a vehicle for women's empowerment.

The Tanzanian Government, as earlier noted, has not exercised affirmative action towards women in many sectors of public decision-making, although it has established a quota system in the political arena. While this is a positive move, most of the women interviewed expressed doubts about the competence and gender sensitivity of most of the women MPs favoured by the quota system.[97] Perhaps because of the failure of past, government-controlled, affirmative measures that Meena suggests a "re-examination of previous affirmative actions in search of options which do not marginalize the oppressed gender."[98]

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[94] Interview with NCCR-Mageuzi Chairman, Mr. Mabere Marando, June 9, 1994.

[95] Smock, A.C. "Women's Education and Roles in Kenya", Working Paper No. 36. Institute of Development Studies, University of Nairobi. 1977.

[96] Freeman, F. (ed.) **Women: A Feminist Perspective**. Palo Alto, California: Mayfield Publishing Co. 1984, p. 238.

[97] On this issue, among those interviewed included Prof. Marjorie Albilinyi, Fatma Aloo, Haunda Sheikh, Bertha Koda and Magdalene Ngaiza.

[98] Ruth Meena. "Do Women Have an Agenda in the Democratization Process?" Paper presented at a TGNP Gender and Development Seminar Series. Dar es-Salaam, July 22, 1994: 8.

Outside the official institutional and policy framework, one redeeming factor in Tanzania is that gender studies is an accepted and relatively well institutionalized academic discipline. There are several women's gender studies groups at the University of Dar es-Salaam, and a vibrant gender research environment. Some of these gender studies groups, for example the Institute of Development Studies-based *Gender Cluster*, have begun to lobby and to play an activist role aimed at empowering women to participate in pluralistic politics. However there is still a need to create a linkage between this rich, gender-research base and the emerging and embryonic gender-activism, and to develop action-oriented programs for women in the new multiparty democratization process. Although, the observable trend suggests positive signs for increased female participation in the democratic process in Tanzania, improving this element of democratic development will depend largely on the strength of the women's movement, which we briefly examine below.

4.2.3. WOMEN'S MOVEMENT AND NETWORKING IN TANZANIA

Ever since Tanzania's return to multipartyism in 1992, the country's women's movement remains weak. The one and only umbrella women's body - Umoja wa Wahawake wa Tanzania (UWT) is still largely ineffective and, as noted above, controlled by the ruling party Chama Cha Mapinduzi (the CCM). Its ability to coordinate other women's groups and organizations and to champion women's rights is still greatly hampered by that control by the CCM. Even with the onset of multipartyism, UWT remains chained to the ruling CCM party. Consequently, many women's organizations have no faith in the UWT and carry out their activities without reference to it.

Without an effective, women's coordinating organization, and despite multipartyism, there is no, one, identifiable women's agenda in the democratization process even as the country prepares for the first multiparty elections in 1995. There are some good women's initiatives in various women's organizations, but no common agenda or vision.[99] However, the national seminars held from mid 1994 to discuss a common agenda for women in the multiparty democratization era, and to raise gender and civic awareness among women may help define a gendered agenda. This and similar initiatives by other mushrooming women's NGOs and lobby groups that have emerged since the country's return to multipartyism provide some basis for gender and rights awareness, as well as for developing strategies for women's political empowerment and effective participation in the democratization process.

Despite these positive developments, one must underscore the need for better coordination and networking among women's organizations and groups, as well as between women decision-makers and other women in society. There is a dire need for an effective national coordinating body to give cohesion and common vision to the women's movement in Tanzania in the new context of multipartyism. The idea proposed in a women's conference in July 1994 to set up a National Women's Council: Baraza ya Wanawake wa Tanzania (BAWATA)[100] should be realized, before the 1995 multiparty elections.

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[100] Mascarenhas, O. and Marjorie Mbilinyi. **Women in Tanzania: An Analytical Bibliography**. Motala, Sweden: Motala Grafiska. 1983.

[101] Bertha Koda and Rose Shayo. "Women and Politics in Tanzania" in Klemp, L. (ed.) **Empowerment of Women in the Process of Democratisation: Experiences of Kenya and Tanzania**. Friedrich Ebert Stiftung. 1994.

4.3. CULTURAL DISCRIMINATION

Even with the generality of the Bill of Rights as incorporated in the 1984 constitutional amendments, the coverage of Article 13, which sanctifies the equality of all persons, includes the prohibition of all forms of discrimination, including that based on cultural identities. Although the particular article does not elucidate the constituent elements of equality, the profound sensitivity of the Tanzanian polity, as a whole, to issues of tribalism (and ethnicity), racism, regionalism, religious animosity and all other primordial identities, makes it obvious that the notion of equality negates all these vices. Unlike the issue of gender discrimination which, as we have indicated above, did not constitute part of the political culture in much of the post-independence period, all the above elements of discrimination are vehemently condemned in the daily political rhetoric. The experience in neighbouring countries is vivid in the mind of every Tanzanian.

The nation's cultural profile contributes to the suppression of social divisiveness on the basis of cultural identity. There are more than 120 ethnic groups which differ in language and tradition. None of them is demographically or politically dominant. While the majority of the people belongs to two main religious denominations (Islam and Christianity) there is a significant number of believers in African traditional religions, Ismailia, Hinduism, and Bahai. Most of the indigenous people are of bantu origin, but there is a sizable population with Indian and Arab ancestry. Underlying all these superstructural divisions are significant differences in the mode of production (trade, agriculture, pastoralism, services) which evolved from spatial and ecological differences, as well as those generated under colonialism.

The combination of ethnicity, race, religion, and mode of economic production make for an intricate cultural map of Tanzania. Throughout the post-independence period, the state attempted cautiously to de-politicize primordial identities by breaking down their political base and promoting their aesthetic and spiritual tradition as a national heritage. The abolition of chiefdoms, the nationalization of land, and the propagation of a plurality of traditions (music, dance, dress, crafts and skills) in the socialization process were part of this strategy.

While the state succeeded in fostering national identity at a superstructural level, it lacked a coherent plan to redress the inherited distortions of uneven development. Neither the Ujamaa policy of rural development nor the subsequent New Agricultural Policy addressed the skewed growth of agriculture as compared to pastoralism, cash crops as compared to food crops, the fertile and high-rainfall areas compared to those which have poor soils prone to frequent droughts.

Industrial development continued to advance in the traditional locations of the eastern and northern zones. The same applied to differences in infrastructural development between rural-urban areas and northern and southern regions. There are also complaints that, throughout the thirty years of independence, the disadvantageous positions of Muslims and believers in traditional religions have not been rectified.

By establishing an overly ambitious national agenda for policy management and avoiding affirmative, social, policy action to redress the imbalances created by uneven colonial development, the state finds itself in the 1990s charged with cultural discrimination. There are now regions which complain of political and economic neglect, and social groups who refer to themselves as disadvantaged and the subjects of discrimination.

An example of cultural discrimination which has attracted local and international attention involves the pastoralist Barbaig community of Hanang district in northern Tanzania. For more than two decades they have complained that their way of life had been disrupted, that their survival was in jeopardy. A large part of their ancestral grazing land has been confiscated by the state, their places of worship desecrated, their movement restricted, and they are frequently subjected to arbitrary arrest, harassment, torture and inhuman punishment. The community accuses the functionaries of a national parastatal (NAFCO) as well as the district authorities of perpetrating these violations.[101]

The Barbaig's problems started as early as 1970 when large tracts of their grazing land were confiscated to establish wheat farms in Basotu, Mulbadaw, Setchet and Murjanda. By 1984 more farms were added in Gidagamowd, Gawal and Warret. A total of 41,243.5 hectares was appropriated, affecting more than 250,000 head of cattle. Throughout this period the community registered its complaints at various levels of government. Late in December, 1992, after twenty-two years of severe hardship, the government appointed a commission of four people, chaired by Justice Kisanga of the court of Appeal, to investigate.

Its findings confirmed the violations, though it underlined that "these acts were not committed in pursuance of a policy of the Government or NAFCO but were committed by individuals of their own accord and volition."[102]

Some of the positive initiatives taken by the government to speed up the rate of development for the Barbaig include: creating district and local government authority, opening primary boarding schools, giving concessions to Barbaig pupils in the entrance requirements for secondary schools, and providing annually 40 million shillings from NAFCO wheat farms for district development.[103]

The commission recommended various measures to improve the plight of the community and the human rights situation and it advised that the individuals responsible for perpetrating the identified abuses be dealt with under the law.

Some experts argue that although much of the Barbaig's predicament can be described as extreme, there are other similar incidents which do not receive public attention. For this report it is necessary to examine the extent to which structures of governance contributed to and/or exacerbated the Barbaig tragedy, and the extent to which the advance of democratization in Tanzania can prevent the recurrence or perpetuation of such injustices before they are addressed.

Justice Kisanga exonerates the government of any wrongdoing, stating that every level of national administration, from the village to the central government, responded responsibly. He noted that there were delays by the police in reacting to criminal abuses inflicted on the Barbaig, and that the community lacks basic infrastructural services. Nevertheless, in the opinion of the Commission, the farms do contribute to the general welfare of the district and the nation as a whole.

One is tempted to agree with the Kisanga Commission that human rights violations which occurred in Hanang district did not constitute a systematic policy of cultural discrimination. Further to the findings of the commission, one should note that the Barbaig people share cultural systems with a number of other pastoral communities (Iraqw, Gorowas, Maasai) who were not subjected to similar abuses. However, there are several policy omissions and commissions which contributed to disrupting a people's way of life and which generated the conflict.

Firstly, the Bill of Rights provides for certain basic rights and freedoms, including: freedom of movement, of worship, and the right to life and to property. The totality of these fundamental rights constitutes the freedom to lead a way of life which is culturally desirable provided it does not violate the basic law of the land. While Tanzania's constitution provides for this right, the state maintains a highly economic view in its consideration of "a way of life" in the course of the policy management process.

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[101] Tenga, N.L. and Bisimba, H.K. "Report on Women's Rights Abuse: A Case Study of Barbaig Women" Dar es-Salaam: SUWATA Legal Aid Scheme for Women, 1993.

[102] United Repubic of Tanzania. "Report of the Commission on Violations of Human Rights in NAFCO Wheat Farms Hanang District". Dar es-Salaam 1993, p.45.

[103] Ibid. p.41

Prominent consideration is given to monetary costs and benefits, but little attention is given to other facets of socio-economic life in the development-management process. Consequently, many programs which have been undertaken in the name of "development" have devastated the cultural existence of the communities affected.

The problem of the pastoral communities in Tanzania, especially that of the Barbaig community, is economic decision-making which values wheat yields and dollar-generation more than the way of life of a people. This will continue for as long as the system of development management remains technocratic and monetarist.

4.4 SECURITY RIGHTS

At a general level, the Tanzanian bill of rights is sufficiently comprehensive to cover all the dimensions of human security and development. Some of the clauses which address security include:

- No person shall be subjected to torture or to inhuman or degrading treatment;
- Every person has a right to live and … to protection of his life by the society;
- Man's freedom is inviolable and every person is entitled to his personal freedom;
- For the purposes of protecting the right to personal freedom, no person shall be subject to arrest, restriction, detention, exile or deprivation of his liberty …
- Every citizen of the United Republic is entitled to freedom of movement and residence, that is to say, the right to move freely within the United Republic and to reside in any part of it, to leave and to enter into it, and immunity from expulsion from the United Republic.[104]

When followed to the letter, the above provisions prohibit extra-judicial killings, torture, arbitrary arrests and detention. However, most of the provisions are formulated such that one clause grants a basic right and the next one virtually withdraws it (referred to as "clawback" clauses in the Tanzanian legal parlance). Thus, the right to protection of life by the society is "subject to law", allowing societal protection to be withdrawn, as it is in the case of capital punishment. Similarly, the clause which guarantees freedom of movement is followed by another which permits the "… imposing of reasonable restrictions on the exercise of freedom of movement, and to subject one to restriction or arrest so as … to protect the interest of the public in general or any specific public interest of a category of the public." Such a clause justifies extended detention without trial.

It is on the basis of these and other clauses that statutes restricting and impinging on individual liberties have remained on the law books. The Nyalali Commission's forty oppressive laws are part of these statutes. They are the legacy of a political and juridical era that sanctified societal rights even when they reduced individual rights–à la Rousseau's social contract. Alternatively, the cumulative reduction of individual rights is tantamount to undermining societal rights. In this respect, the state's reluctance to repeal the said laws demonstrates the secondary importance it accords to improving individual rights. If this is a correct conceptual position, then most of the "oppressive" laws will remain on the books and enforced for at least the next term of government.

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[104] United Republic of Tanzania. **The Constitution of the United Republic of Tanzania**. 1977. Dar es-Salaam: Attorney General's Office October 1990, pp. 17-18.

Establishing the justiciability of the bill of rights by enshrining it in the constitution is a critical step in the democratization process. But real challenge in promoting security rights lies with actual bureaucratic and civil practices. A meaningful indicator of the respect accorded to human rights is the extent to which institutions of government uphold the basic norms and values engendered in constitutional and statutory provisions. It is also revealed by the degree to which citizens accord each other the rights embodied in the legal documents.

Tanzania's record, particularly in the area of security rights, is positive. All reported cases of extra-judicial killings are investigated and prosecuted. In fact, the killings which have been reported so far cannot be described as "systematic". The cases documented by Chris Peter–including the massacre at Kilombero, suspects tortured to death in custody, and killings by police and people's militia–are far from being regular and systematic. The very fact that information about these cases may be obtained from judicial records means that the alleged perpetrators were charged and sentenced in courts of law.[105]

The 1993 report by Amnesty International reveals that although Tanzanian government continues to abuse human rights, the violations do not include wanton killings and systematic torture. The main abuses include: arbitrary detentions without trial, inhuman and degrading punishments, and harassment of human rights and political activists. An example is the arbitrary arrest of 36 people for demonstrating peacefully against the authorities for charging some Muslim activists, allegedly for destroying pork butcheries. Bail was denied for periods ranging between one and two weeks before the charges for holding the demonstrations were dropped and the people were released.

The report illustrates the continuation of cruel, inhuman or degrading punishments by the case of one Samil Walji of Dar es-Salaam who received six strokes of the cane after he had been convicted of trespassing with intent to commit a felony.[106]

Civil society in Tanzania cannot be exonerated from committing human rights abuses. In the early 1980s, there was a wave of killings of elderly women in Mwanza and Shinyanga regions. Figures given by the Minister for Home Affairs when he was addressing a women's convention in 1994, revealed that of the 1216 murders committed between 1980 and 1983 in Shinyanga region, 78.54 per cent were women who were considered to be witches. Similarly, in Mwanza region, during the same period there were 1045 murders, of which 72 per cent of the victims were women. Most of the murders relate to a traditional belief in these regions that old women with red eyes are witches who harm others. Medical reports indicate, however, that these women get red eyes from prolonged exposure to smoke while cooking and using cow dung as fuel![107]

The most atrocious violation of basic human rights perpetrated by citizens is the pervasive tendency to carry out mob lynching. Many people have been brutally murdered by mobs in urban centres on the mere suspicion of being thieves. While writing this report, one of the author's nephews was slashed, pick-axed, and bludgeoned to death with heavy stones when he was mistaken for a robber. The pious young businessman was not given time to identify himself before the mob pounced and sentenced him to a most vicious death–beyond the wildest imagination of any civilized person.

To some extent, this barbaric urban culture represents the lowest level of moral degeneration. However, such abject violation of the sanctity of human life is essentially a manifestation of a society which has lost faith in the justice institutions. Poor or no response by police, acquittals or light sentences for criminal offenders, and delays in court proceedings are factors which drive mobs to take the law into their own hands. When the state fails to protect its citizens, Rousseau's social contract encounters its highest crisis, whereby individuals reclaim the rights which they had abdicated with the formation of society. The consequence is the return to the wild state of nature!

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[105] Peter, C. **Five years of the Bill of Rights** ... Op. Cit. pp.150-156.

[106] **Family Mirror** (newspaper) 2nd Issue July 1994 pp.1-3.

[107] **RAI** (newspaper) 28th July - August 3, 1994 p.9

Neither the violations perpetrated by agencies of the state nor by elements of civil society are yet alarming by global standards. However, when one analyzes the factors which instigate the violation of human rights, one is tempted to conclude that the underlying basis is systemic. The extensive use of torture as a means of interrogation by security agents reflects weak investigative skills. The murders of red-eyed old women are a legacy of a primitive culture. And the persistence of mob lynching is a psychopathic phenomenon as well as a failure of the justice system. All of these are systemic features and need systemic solutions.

Among the important pre-requisites for improving human rights in any society are civil organizations capable of raising the level of awareness about rights, monitoring and publicizing violations, and mobilizing internal and external support for action. In Tanzania, the few institutions there are very weak.

Although there is a registered chapter of Amnesty International in Tanzania, the authors of this report were unable to locate its offices and there is little publicity about its activities. In April 1993, a Human Rights Centre was established at the Faculty of Law, University of Dar es-Salaam. Its main task at present is to build a computerized database.

A Human Rights Monitoring Group (HURIMOG) has been established in Arusha. Still in its infancy it is struggling to consolidate itself. There are also initiatives to register a new association called 'The Tanganyika Human Rights and Democracy Society (THRDS). Its application for registration was submitted to the government on November 17, 1993; it defines its main activities as education, research, consultancy, monitoring human rights abuses, and the development of democracy in Tanzania.

Most of the above organizations are either in the process of formation or have not yet established their presence in society. The most active civil agencies, whose contribution to the protection of human rights has been truly significant, are the legal aid associations. Most of them are based in Dar es-Salaam, but they are beginning to spread their activities to the regions, and especially to the rural areas. They organize educational programs, distribute pamphlets and even undertake litigation. Their major limitation is that they are almost entirely dependent on external funding.

4.5. WELFARE RIGHTS

Sustainability of the above political and civil rights is reinforced by the prevalence of a material situation which nurtures human welfare: basic rights and freedoms are meaningless if an individual is rendered powerless to combat disease, ignorance and abject poverty. After all, the essence of human integrity encompasses civil and political, as well as basic welfare rights.

Indeed, it is in recognizing the broader dimensions of human integrity that the notion of human rights transcends the dominant focus on individual civil liberties (of the French revolution) to include such elements as the right to: basic needs, work, a clean environment, resources, and international as well as national security.

Some experts go even further and suggest that social and economic rights are important not only for their own sake, that they are also vital for sustaining democracy. In this regard it is not the mere presence or absence of welfare rights which affects the sustainability of democracy.

Differences in accessibility can also impede democratic development. Zehra Arat has observed that sustained and extreme material inequality, or the absence of public policies to redress such distortions, may contribute to democratic decay.[108]

For almost two decades after 1967, Tanzania strove vigorously to provide basic welfare with a collectivist approach. By the mid-1970s the state had pledged to provide universal primary education. It had committed itself to full, functional adult literacy and to provide every citizen free access to a primary health facility within a five-kilometre radius. The achievements, by the end of the 1970s, were remarkable.

Primary school enrollment rose from 0.47 million in 1961 to 3.54 million in 1981. Every village had a primary school thus providing access for 90 per cent of all children to a school within a four kilometre distance. The literacy rate rose to 70 per cent in the early 1980s.[109] Seventy-two per cent of the population lived within five kilometres and 93 per cent within ten kilometres of a health facility.

The bureaucratic nature of providing service coupled with the acute economic crisis of the 1980s eroded the above achievements, however, and by the mid 1980s the state could no longer maintain even the minimum level of social services. The initial attempts to surmount the difficulties through short-term measures yielded minimum results. By 1986, Tanzania had no option but to adopt an International Monetary Fund (IMF)-sponsored Structural Adjustment Program (SAP) to qualify for external credit.

At the time of writing, the country had gone through two SAPs and was in the middle of a third. From 1986 to 1990 the Economic Recovery Program was implemented; between 1991 to 1993 it was the Economic and Social Action Program (ERP II) and, currently, the Rolling Plan and Forward Budget (1993/94 - 1995/96) is in place in Tanzania, a routine extension of the SAP supported by the IMF and others.

It became increasingly evident during the eight years of implementing programs related to structural adjustment, that the social service sector was suffering seriously. The requirements of structural adjustment programs, particularly those pertaining to the reduction of public expenditure, privatization, de-regulation, and cost-sharing, have reduced access to basic welfare for the most vulnerable groups.

The table below illustrates the diminishing levels of expenditure in health and education during the structural adjustment era. In 1979, the budgetary allocation for education and health was 18.8 of the total expenditure, while economic services received 42 per cent and the public debt consumed 8.8 of the total. By 1992 the expenditure on education and health was reduced to 15 per cent, and economic services received only 24.5, while the allocation to public debt increased to 31.5 per cent of the total expenditure. This trend confirms the main accent of the IMF-sponsored programs, which is to rectify balance-of-payment problems.

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[108] Gillies, David. "Human Rights and Democratic Governance: A Framework for Analysis and Donor Action", (Terms of Reference) Montreal: The International Centre For Human Rights And Democratic Development, April 1993, p.9.

[109] Chaligha, Amon E. "Social Services Sector Within the Changing Development Philosophy in Tanzania", A paper presented at the Second State of Politics Conference. Dar es-Salaam July 4-6, 1994 p.21.

ALLOCATION OF CENTRAL GOVERNMENT EXPENDITURE BY SECTOR (PERCENTAGES)[110]

YEAR	GENERAL PUBLIC SERVICE	DEFENCE	EDUC.	HEALTH	ECON. SERVICES	PUBLIC DEBT	OTHER
1976	17.4	12.3	13.6	7.4	35.3	5.8	-
1977	14.8	14.6	14.4	7.2	36.5	7.5	-
1978	14.4	24.4	11.6	5.3	32.1	8.4	18.4
1979	17.2	8.9	13.0	5.8	42.1	8.8	4.0
1980	18.6	11.1	12.0	5.4	37.3	11.6	3.6
1981	17.9	11.5	12.4	5.4	30.2	17.8	4.0
1982	17.1	13.2	13.2	5.1	24.0	20.2	4.1
1983	21.6	12.8	11.7	5.4	26.1	18.1	4.0
1984	21.8	13.3	6.5	5.8	23.5	18.3	4.2
1985	29.8	15.0	6.9	4.8	19.2	20.2	4.1
1986	27.3	14.5	6.4	4.5	18.6	25.0	3.6
1987	27.7	10.4	5.4	4.5	18.6	25.0	3.6
1988	26.6	9.1	5.5	4.4	16.9	30.5	6.6
1989	31.2	8.5	6.6	4.9	15.9	25.6	7.1
1990	23.4	6.2	6.9	4.9	22.1	29.8	6.5
1991	33.2	8.5	6.5	5.0	17.2	23.9	5.5
1992	18.5	7.0	8.6	6.4	24.5	31.5	3.5

To some extent, the increased participation of the private sector and non-governmental organizations in providing some basic social services offsets the negative effects arising from the reduction in central government expenditures. However, the removal of subsidies and the introduction of user fees, combined with the profit orientation of privately supplied social services, has barred a majority of the population from benefiting from seemingly improved quality of services. The effect of this situation is statistically captured by Professor Allan Smith of the Central Connecticut State University, in the following observations:

> *The infant mortality rate remains high, at 103 per 1000 live births, as does the maternal mortality rate, at 200 per 100,000 births. This latter rate, which tends to correlate with health service access and malnutrition, was highest in the south-central regions of Iringa. Mbeya, and Singida ... The infant mortality rate is 167 per 1000 ... The maternal mortality among Tanzanian women is 60 times higher than that of women in the north, and they are 200 times more likely to die in child birth ... The maternal mortality rate was on an upward trend in 1990 and 1991, a reflection of deteriorating health services under the stress of structural adjustment in the economy and the general economic situation ... [There] is a 30-50 per cent rate of malnutrition which drastically increases the incidence of malaria episodes and respiratory infections, and the rates of death from them, not to mention the rate of*

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110 Economic Research Bureau. **Tanzania Economic Trends 1992** Vol 5 No 2 July 1992. Dar es-Salaam: University of Dar es-Salaam

> *micronutrient deficiency diseases relating to deficiency of iodine, vitamin A, iron and folic acid … [Furthermore] chloroquine-resistant strains of malaria seem to be spreading widely, but the drugs effective against them (e.g., lariam) are too expensive for most of the country … More frightening is the scope of the AIDS epidemic, which is estimated to have surpassed malaria as the leading cause of death of Tanzanians.*[111]

Besides portraying a deteriorating health situation, the above figures also reveal that the main victims have been mostly women and children. At the same time, according to World Bank calculations, per capita income inequality in Tanzania has increased from a Gini coefficient of 0.39 in 1969 to 0.57 in 1991. Using an extremely low figure for mean adult-equivalent expenditure of US$ 0.62 per day, 51 per cent of the population is classified as poor and 36 per cent as hard-core poor. [112] The majority of these cannot afford to visit a fee-charging hospital or buy drugs from a pharmacy.

A similar state of deprivation prevails in the educational sector. Central government reductions in budgetary support and the introduction of cost-sharing have caused the quality of education to decline. Concurrently, there has been a substantial fall in enrollment at the primary school level. It has been estimated recently that one text book is shared by an average of 3.6 students; five or more students share one small desk designed to be comfortable for two. Similarly, the net enrollment ratio for 7 to 13-year-olds was 54.2 per cent in 1992. During the same year only 47 per cent of 6 to 15-year-olds were enrolled in schools.[113]

In the 1990s, the severity of welfare deprivation began to manifest its social impact in two ways. First, it induced a revitalization of the civil society through associations formed for the self-provision of such basic services as education and health. By 1990, the non-governmental sector had established 477 dispensaries out of 2,695, and seven out of 272 health centres which existed in the country.[114] Similarly, the table below demonstrates the participation of the NGO sector in providing high school education in the country.[115]

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[111] Smith, Alan G. **Tanzania Report**. (mimeograph), Department of Political Science, Central Connecticut State University, New Britain, USA. pp.65-69.

[112] World Bank. "Tanzania: A Poverty Profile". Washington: The World Bank. p.32.

[113] Smith, Alan G. **Tanzania Report** … Op. Cit. pp.71 -72.

[114] (Mushi, Semboja, Therkildsen p.8).

[115] As cited in Ishumi, A.G.M. "Challenges and Dilemmas in Social Service Provision: The Story of the State and Non-Governmental Organizations (NGOs) in the Development of Education in Tanzania, 1860s-1990s" A paper presented at a seminer on … 1992. p.28.

TRENDS IN ESTABLISHING HIGH SCHOOL AND PUPIL ENROLLMENT IN TANZANIA (MAINLAND) BY SECTOR, 1980-1990

YEAR	PUBLIC (STATE) SECTOR		PRIVATE (NGO) SECTOR		COMBINED	
	No. of Schools	Pupil Enrollment	No. of Schools	Pupil Enrollment	No. of Schools	Pupil Enrollment
1980	83	38,830	71	28,466	154	67,296
1981	85	38,292	82	29,310	167	67,602
1982	85	38,983	82	30,162	167	69,145
1983	85	39,737	84	31,536	169	71,273
1984	85	40,617	85	33,591	170	74,208
1985	86	42,323	104	40,775	190	83,098
1986	95	43,363	124	48,279	219	91,642
1987	103	45,821	142	58,225	245	104,046
1988	113	50,584	175	68,256	288	118,840
1989	124	57,482	195	75,003	319	132,485
1990	135	61,928	213	83,314	348	145,242

Between 1980 and 1990, the public sector built 42 new schools, whereas the private and NGO sector built 142 new high schools. By 1990, NGOs were the dominant provider (61.2 per cent of schools and 57.3 per cent of enrollment) of high school education.

After education, institutional management is the second area in which the impact of adjustment reforms on basic welfare is most evident. The hardships caused by budgetary under-funding have generated a series of managerial conflicts in schools, universities and health institutions. Reports of student protests against inadequate dietary provisions, insufficient allowances, and even unavailability of teachers are becoming more frequent and even more violent. Even doctors and nurses are being forced to lay down tools as a last-resort means of pushing for certain demands.

The managerial conflicts which afflicted a number of educational and health institutions in the early 1990s initially started as basic welfare and economic demands. Gradually they assumed a political dimension as they began to address issues pertaining to the management and decision-making systems in those institutions. Indeed, it is at this level that basic welfare demands encapsulate the democratization struggle. A memorandum submitted by the University of Dar es-Salaam Staff Assembly (UDASA) in a reaction to a proposed university reform illustrates the transcendence of basic welfare demands into the political realm:

> *Before addressing the substance of the proposed program, we would like to stress one important point. Although certain benefits accrue to individuals who graduate from institutions of higher learning, university education and scientific knowledge-creation should not, strictly speaking, be treated as private goods to be sold in the market place. Like roads, sanitation or, indeed, national security, they are public goods requiring public funding. Universities, therefore, as instruments for education and scientific knowledge-creation, serve not so much the individual citizens as the community as a whole. As instruments for the people, Universities ought to be accountable to them.*[116] —

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[116] University of Dar es-Salaam. "Report of UDASA's Ad hoc Committee Appointed to Study and Advise on The Institutional Transformation Program: UDSM 2000" (mimeograph) Dar es-Salaam: Academic Staff Assembly, University of Dar es-Salaam. November 1993. p.3.

PART FIVE

External Support

Despite appeals for assistance relating to democratization and human rights, the bilateral development assistance agencies of Western governments and their multilateral colleagues have provided only minimal support to the democratization process in Tanzania. By the end of 1994 of the more than fifteen governments and multilateral agencies actively involved in the various sectoral activities of the country's development programs, only seven countries and the World Bank had provided assistance to promote democratic development. Compared to the support for economic development, their contribution to democratization is merely symbolic.

Donor agencies are involved in four main areas of the democratization process in Tanzania: improving the election system, strengthening central democracy-related institutions, increasing democratic awareness and skills, and building civil organizations. Although a few donors have undertaken joint activities, most external support is country-specific. Below we shall highlight some of the areas donors have supported in the last two years; the list is not exhaustive.

The governments of Denmark, Sweden, Finland, the Netherlands and the European Union contributed 5 billion Tanzanian shillings (approximately US $10 million) to the Election Support Project coordinated by the Danish embassy. The long-term aim of this project is to enhance good governance in Tanzania through support for the democratization process and to enable the country to gain experience in planning and implementing the presidential and parliamentary elections. The short-term goals for the support project include: to help defray the cost of local government elections (in October 1994), to contribute to information programs and campaigns for electoral personnel and voters, to help voters achieve the highest possible degree of understanding of their rights and duties, to encourage a high election turn-out and provide as free and fair a playing field as possible for all participants in the political arena.

In a separate contribution Norway, Denmark, and Sweden are also supporting a monitoring study of local elections carried out by the Department of Political Science and Public Administration, University of Dar es-Salaam.

The government of Japan contributed US$93,880 to a voter education program being implemented by the Eastern and Southern African Universities Research Program (ESAURP). The grant will assist the political pluralism education effort to meet the printing cost of 400,000 copies of a pamphlet entitled "Participate in Leadership Elections". These funds also cover the procurement of computer and related equipment to support the education-for-democracy project, a project aimed at sensitizing political parties to the need to respect the rules and procedures intrinsic in multiparty democracy, as well as increasing voters' awareness of their right to participate in elections, and providing for smooth transitions of power and good governance through free and fair elections (Business Times Friday Sept 2-8, 1994 p.2).

The government of Tanzania has also received a credit from the World Bank for the Financial and Legal Management Upgrading Project (FILMUP). Besides contributing to the improvement of the managerial efficiency of the justice system, resources from this loan will be devoted to the compilation, indexing and publishing of all laws. This will be the first such revision since 1965. The exercise of consolidating these scattered statutes will facilitate the accessing and retrieval of legal dispensation.

The Government of Canada has refurbished the principal primary court house in central Dar es-Salaam to help promote the rule of law.

The German foundation Friedrich Ebert Stiftung (FES) has strengthened the system of local self-governance by financing councillors' education and local government research, workshops and publications. During the last six years it has been working closely with the Institute of Development Studies of the University of Dar es-Salaam, the Association for Local Authorities (ALAT), and the ministry responsible for local government to conduct regional workshops for councillors to help them understand local government law, planning, budgeting, and generalmanagement. It is not known if FES will continue with this program in its next planning phase.

FES has also been supporting the new parties by providing their leadership with study-tours abroad, assistance to travel to meetings, secretarial facilities, and funds for organizing workshops and conferences.

The USAID contracted two consulting firms–Associates in Rural Development Incorporated (ARD) and Management Systems International (MSI)–to assess the transition to democratic governance in Tanzania and to provide guidelines for near-term action. Its March 1994 draft report is being studied by the Agency. As of the end of 1994, the media have not reported on USAID assistance to the democratization process.

There are several, smaller interventions to strengthen civil associations in the context of the new situation. The Swedish Trade Union, for example, is assisting the Organization of Tanzania Trade Unions (OTTU) to consolidate as a strong, autonomous instrument of the workers. During the last two years, with the help of a resident consultant provided by the Swedish Union, the constituent Tanzanian unions have been created and the instruments for upgrading worker education have been prepared. ▬

PART SIX

Areas Urgently Requiring External Support

Numerous areas requiring improvement have been identified in the socio-political and institutional framework for democratic change in Tanzania. To address them and to harness the capacity of people and organizations that identify with them, several tasks have to be supported and initiated in the immediate future. They are as follows:

1. Launch an intensive and extensive program of civic and legal education. Such a program must address training relating to the formation and operation of political parties and other associations, election systems, human rights and citizenship. It must enlighten all levels of society about the essence of a functioning plural democracy.
2. Assist the National Electoral Commission in conducting free and fair elections; strengthen its institutional capacity. This will require a review of its current mandate and authority which restrict it to administering elections. Create independent, Tanzanian, election monitoring institutions to strengthen further the election system.
3. Assist the growth of dynamic associations which can promote development in the areas of gender, culture, human rights and trade unionism. This very broad task entails providing assistance in capacity building, sensitization, networking and project implementation.
4. Government should remove all obstacles to the establishment of gender equity; and establish a legal and institutional framework to promote gender equity and facilitate more effective participation of women in public life and high office. Government should undertake, while this realizing that gender equity is an essential prerequisite to democratic development and the safeguarding of human rights.
5. Strengthen women's organizations and groups so they can lobby and influence the democratic process. The existence of gender-sensitive legislative and policy frameworks, without an empowered and gender-sensitized society and a strong women's movement, is not enough to attain a democratic society. Support women in devising strategies for mainstreaming gender as a central issue on the democratic development agenda. An important starting point would be to create a commonly accepted national coordinating machinery and build networks and alliances among the many diverse women's initiatives in Tanzania.

6. Assist the growth of strong opposition parties by providing broad-spectrum training for party leadership, organization, administration, policy development, campaigning and fund-raising. Training should go beyond elections to address the functioning of parliament, the role of the government and the loyal opposition (and its concept), running a constituency presence and representing one's constituency, operating effectively as a member of parliament, and so on.
7. Review the mandate of the Registrar of Political Parties, an institution which will play a critical role in nurturing the growth of political parties. Support should be given to assist in the growth of institutions essential to the sound functioning of a multiparty democracy.
8. Assist local government councils by providing training to councilors and technocrats; improve their basic administrative facilities. Streamline the relationship between local authorities, the central government, and communities. A major task in this exercise is to review the entire legal framework which sustains the local government system.
9. Assist the training of media personnel, particularly in the non-state sector. This will result in radio and television being used as effectively as possible to support democratic development.
10. Assist the Law Reform Commission in conducting its legal review activities. This assistance could include training researchers, improving institutional facilities and operational linkages with other government, parastatal and civic institutions.
11. Expedite the process of consolidating scattered legal statutes, including the constitution. This could be part of strengthening the judiciary as well as the Ministry of Justice within the FILM-UP project.
12. Assist the President's Office in developing a strategic design for managing the transition to multiparty democracy.
13. Link the current civil service capacity-building initiative with the democratization process, especially in terms of fostering legality, accountability, and transparency in the management of the public policy process.
14. Provide training to members of parliament to increase their skills in conducting policy analysis and supervising government programs and activities.
15. Design more tangible projects in the context of the Social Dimensions of Adjustment. Assist the Planning Commission in managing the structural adjustment program and lobby the IMF, World Bank and Bilateral aid agencies to be more aware of welfare rights when they support development projects.
16. Assist the process of knowledge creation and dissemination, and encourage discussion on democratic development by financing research, conferences and journals, and publishing books on human rights and democratic development. Support the establishment of courses on democracy at institutions of higher learning.

Assigning priorities to these tasks must consider the scheduling of specific phases of the transition process as well as the particular interests of individual supporters. In the run-up to the first general elections, around October 1995, the highest priority should be to ensure a free and fair electoral process. During this period, some supporters may wish to help consolidate the rule of law, or promote social and cultural rights.

After the October elections, the reform of the main organs of governance should be addressed, a process which could be facilitated by the presence of members of the loyal opposition in parliament. Tanzania will also need assistance to handle the tension of introducing a pluralistic system of governance.

The consolidation of civil society and the promotion of legal awareness are tasks which should be supported at every stage of political change. —

PART SEVEN

Conclusion

In June 1992, Tanzania embarked formally on the path towards democratic pluralism. Unlike in most other African states, the transition in Tanzania entails transforming a single-party state-apparatus, with elaborate ideological and bureaucratic connections, which has ossified during its dominance of society for more than three decades. In such a context, the transition tasks are bound to be intensive and protracted.

The promulgation of change was preceded by a limited consultative process undertaken through a commission of inquiry. After adopting the main recommendation–to establish a multiparty political system–the state not only declined to subscribe fully to the rest of the commission's proposals, but it also abandoned the consultative process for directing the transition. The dysfunctions arising from exclusive guidance of democratic change were compounded by the incumbent regime, a decision to retain direct management of the change. In this regard, the democratization process has been limited to a regime-controlled transition.

During the past two years, major steps have been taken to establish democratic pluralism. A multiparty system has been legalized and, to a limited extent, election procedures have been modified to accommodate competitive elections. The private media are permitted to circulate, parliament has been given more power to control the executive, and the autonomy of the judiciary has been reasserted. In other words, the minimum legal and institutional framework for the functioning of a plural democracy has been put in place.

Closer examination of the steps taken so far reveals that, even at an institutional level, the changes are inadequate. The growth of a social movement which could lead to the emergence of the institutional media requisite for profound democratic change such as parties, unions, and other forms of association, has been preempted by the state's decision that mobilization and political participation may take place only under the auspices of registered parties. This has led to the existence of weak parties which lack constituencies and institutional coherence. It has also fostered the political underdevelopment of civil associations.

Similarly, retention of extensive legal impediments to effective interest articulation inhibits the functioning of political pluralism. The circumscribing of the functions and powers of the Electoral Commission assures that excesses of the state machinery cannot effectively be contained.

The process of democratization involves a major overhaul of the governing apparatus which sustained one-party rule. Parliament itself requires change. Although the removal of party tutelage has infused some vibrancy and relative autonomy into the institution, its excessive partisanship circumscribes its capacity to exert pressure to accelerate democratic transition.

During the 1990s parliament exhibited an increasing militancy in its criticism of policy failures. This militancy was not matched with equal vigour in urging the government to expedite democratic changes. Furthermore, the institution still suffers from an inability to foster accountability, particularly in the system of development management. It lacks the technical capacity to control the management of development revenue and expenditure, and it cannot call to task the people responsible when regulations are transgressed.

The executive organ of the state has been given the task of guiding the transition process. This new assignment adds to the burden of an already overcharged executive which, for the past seven years, has been grappling with the demands of executing an exogenously controlled structural adjustment program. During the past two years, the executive exhibited several dysfunctional features. It maintains a diffused institutional structure which impairs its capacity to initiate, respond, and coordinate activities associated with the democratic transition. In fact, it does not appear to have a focal point to manage the change. Furthermore, during the last two years it has demonstrated an unpreparedness to extend the space for democratic participation and has not reconciled political partisanship with national leadership.

The judiciary appears to be one institution which was not severely damaged by the two decades of party supremacy. It maintains a degree of vigour and dynamism in dispensing justice. Even during the era of one-party rule, some of its members were activists and succeeded in limiting violations of fundamental rights. The legislative re-establishment of its autonomy will enable the judiciary to play a progressive role in the democratic process although its performance is handicapped by administrative limitations.

The main challenge for the democratization process in Tanzania is to redynamize civil society and enhance its capacity to engage a state which, for three decades, has subdued growth within civil society. While the proliferation of non-governmental organizations since the second half of the 1980s may be an indication of a resurgence of civil associations, most of them are welfare-oriented. They are generally engaged with survival programs, trying to fill a vacuum left by the relinquishing state. Only a few are involved with promoting human rights and strengthening political empowerment.

The most serious handicap of civil society is its weakness in the area of civic and legal education. Most of the population has no experience with democratic pluralism. The brief interlude when a multiparty political system was in effect was dominated by the anti-colonial struggle. Society lacks the requisite traditions of liberal democracy. Similarly, civil society has become alienated from propagating issues pertaining to rights and duties because these had become a dispensation of the state.

A notable achievement of Tanzania's state dominance is its impressive record in preventing extrajudicial killings. Almost all cases of reported killings are prosecuted. However, while the same applies to torture and arbitrary arrest, which are also prohibited by the law, agents of the internal security forces are prone to use these methods to coerce information from suspects. While the existing law legalizes detention without trial, proposals to repeal it have not been heeded.

There is also a rising tendency, particularly in urban areas, for communities to execute `instant justice on suspected criminals, even to the point of committing murders.

The propensity of urban mobs to punish suspected criminals, thus violating their basic rights, is exacerbated by the failure of the legal enforcement system to respond and prevent criminal behaviour. The shortage of security agents, the inadequacy of such basic facilities as vehicles, communication equipment, and even protective weapons impair the effectiveness of the security system. Under such circumstances, communities are forced to apply their own system of justice, thus contributing to a breakdown in the rule of law.

The innovation of encouraging community vigilante groups to complement the state security system is effective in some cases. It is hampered, however, by the failure of the government to legalize their existence and regulate their activities.

The gender and culture situation is worse. The constitution is ambivalent about gender and cultural rights; it does not mention gender as an example of a constituent of equality. Changes in legal provisions pertaining to marriage and succession have not improved the plight of women. Women play a marginal role in the policy management process. Positive developments in the proliferation of gender-based associations are weakened by poor networking and coordination.

The ideological exaltation of cultural development is limited to its aesthetic and spiritual dimensions. As a way of life, culture is not accorded respect in the process of development management. The cultural rights of communities which maintain an organic linkage between their mode of material existence and their aesthetic and spiritual life are increasingly violated in the course of implementing economic projects. The situation is compounded by the insensitivity of the state when cultural factors are an important component of the planning process. The absence of a resource tenure policy compounds the problem.

Finally, during the 1970s, Tanzania achieved impressive records in providing for welfare rights. However, with the advent of structural adjustment policies and reductions in budgetary expenditures as well as the commoditization of health and education, the welfare of the people has deteriorated. One positive development arising from this situation is that, since the end of the 1980s, the participation of non-governmental organizations in providing for basic welfare services has increased.

Despite the above-mentioned defects in the institutionalization of the democratic process, particularly the reluctance of the executive and the parliament to act more rapidly, the prospects for change in Tanzania are still promising. In the first place, there is no single institution either among the organs of state or within the civil society which openly opposes democratic change. Neither parliamentary reticence nor executive stalling can reverse the momentum of change.

In fact, during these two years there has been a recrudescence of civil society. Civil associations are reasserting themselves by consolidating their organizational structures, increasing their awareness, and strengthening their capacities. Women's organizations, trade union associations, student movements, and even squatters and vendors are making critical demands on the state which have a bearing on systems of decision-making and political relations.

One factor which sustains the dynamic of change is the flourishing of independent media. During the past two years they have kept up the pressure for change by fostering accountability and maintaining a plurality of political articulation. Similarly, by shedding light on the performance of the organs of governance, the media have introduced some degree of transparency. At the same time, by providing non-hegemonic information and education, the new media have contributed to the empowerment of the civil society.

There is also a breakdown apparent in the political coherence of the organs of governance. The reapportion of judicial autonomy, coupled with the enhanced supervisory role of the parliament over the executive, have weakened the political corporatism which prevailed for thirty years. The potential for change is more significant at this stage now that the organs of governance are forced to identify more closely with the demands of civil society.

Support from the international community for democratic transition in Tanzania has been lukewarm. Few donors have provided substantial assistance to help accomplish the major tasks facing the country. Although there are several tasks which could benefit from immediate external assistance the future of democratic development and respect for fundamental rights and freedoms will depend upon and be determined by Tanzanians themselves.

PEOPLE INTERVIEWED

1. Mr. Ben Lobulu, Commissioner, Electoral Commission and Chair, HURIMOG (Human Rights Monitoring Group), Arusha Tanzania, 21 April 1994.
2. Ms. Fatma Aloo, Chairperson, Tanzania Women's Association (TAMWA), 7 June 1994.
3. Monica E. Mhoja, Program Coordinator, SUWATA (Legal Aid Scheme for Women), Dar es-Salaam, Tanzania.
4. Mr. Gerhard Wendler, President Director, Friedrich Ebert Stiftung (FES), Dar es-Salaam, Tanzania, June 1994.
5. Dr. Ludgela Klemp, WID Program Coordinator, FES, Dar es-Salaam, Tanzania, March and June 1994.
6. Ms. Hamida Sheikh, Secretary General, Welfare Through Law, Dar es-Salaam, Tanzania, March and June 1994.
7. Hon. Mr. Justice Raymond Mwaikasu, Chairman, Law Reform Commission, Dar es-Salaam, Tanzania, 10 June 1994.
8. Ms. Julie Manning, Commissioner, Law Reform Commission, 10 June 1994.
9. Mr. Mabere Marando, Chair, National Convention for Construction and Reform (NCCR)-Mageuzi, Dar es-Salaam, Tanzania, 9 June 1994.
10. Dr. Kaborou, Chama cha Demokrasia na Maendeleo (CHADEMA), Dar es-Salaam, Tanzania, March 1994.
11. Registrar of Political Parties, Dar es-Salaam, Tanzania, 9 June 1994.
12. Mr. Shija, Managing Editor, Mwanainchi, June 1994.
13. Ms. Magdalene K. Ngaiza, Senior Lecturer, IDS, University of Dar es-Salaam (UDSM) Tanzania, June 1994.
14. Ms. Bertha Koda, Senior Lecturer, IDS, UDSM, Tanzania, March 1994.
15. Dr. Chris M. Peter, Senior Lecturer, International Law, UDSM, Tanzania, June 1994.
16. Prof. Marjorie Mbilinyi, Professor, IDS, UDSM and Coordinator, Tanzania Gender Networking Program (TGNP) 8 June 1994.
17. Dr. A.S.Z. Kiondo, Senior Lecturer, Political Science, UDSM, June 1994.

DEMOCRATIC DEVELOPMENT WORKSHOP IN DAR-ES-SALAAM, TANZANIA

On May 22 and 23, 1995, the Tanganyika Law Society, the Institute of Development Studies and the International Centre co-sponsored a democratic development workshop. Approximately 120 Tanzanians active and concerned about strengthening democratic development in Tanzania, including lawyers, judges, academics, representatives of human rights organizations and pastoralist communities, grassroots development NGOs and womens rights groups, came together to discuss the research study *Towards a Reconstruction of State-Society Relations: Democracy and Human Rights in Tanzania.* This democratic development study was prepared and presented by two leading African scholars, Dr. Maria Nzomo, Institute of Diplomacy and International Studies, University of Nairobi, and Dr. Mohamed Halfani, Institute of Development Studies, University of Dar-es-Salaam.

Representatives of civil society and the state discussed some of the crucial and complex challenges to democracy in Tanzania, namely the slow and difficult transition to multipartyism; the critical role of maintaining the independence of the judiciary; the challenge of forging the state-society linkage: popular participation and the democratic process; mechanisms to strengthen civic associations at the local and national levels, including independent media and professional associations.

The Centre's Africa Programme is now actively refining its long-term democratic development programmes with partners in Tanzania in three areas identified as priorities by the workshop participants: the promotion of women's human rights, particularly addressing the issue of gender and governance; the creation of an effective national human rights mechanism to educate the population on basic rights and to defend their rights; as well as the professionalization of independent media organizations. ▬